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THE SELECTIVE PROTECTION OF CANADIAN WORKING WOMEN

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FOREWORD

The Selective Protection of Canadian Working Women is based, on two studies completed in 1986 by **Nancy Miller Chenier**. The first of these, a research paper entitled *Special Protective Measures for Women in the Field of Working Conditions*, was prepared at the request of the International Labour Organization. The second and related project, commissioned by the Women's Bureau, Labour Canada, dealt with protective legislation for women in the areas of mining, atomic radiation, and night work.

Legislative changes since 1986 have been incorporated in the paper wherever possible.

1. INTRODUCTION

Women in Canada have faced and continue to face numerous disadvantages in their efforts to be full participants in the labour force. Although their rate of participation has shown a steady increase since the turn of the century, women workers continue to be concentrated in a small number of employment categories. Various explanations have been offered to account for their segregation in service and white-collar occupations: biological arguments holding that women have lower physical and intellectual capacities than men; social arguments pointing to attitudes about sex-specific roles, and the impact of traditional education and training; and structural arguments concerning the way work has been organized to meet the needs of both employers and workers.

One such structural factor has been the legislation governing the workplace and, in particular, legislation that was considered 'protective of women'. Such legislation was intended to protect women of child-bearing age, pregnant women, and women as a group from various physical and/or moral hazards or conditions in selected workplaces. For example, women were totally prohibited from working in or around mines and were restricted in the number of hours and type of work they could do in factories. But in areas where they worked in large numbers – as domestic servants, teachers, laundresses, seamstresses, tailors, and milliners – their plight was not a focus for legislated reform.

This report examines protective legislation for Canadian women workers. It studies the historical basis, the evolution, and the current trends shaping this legislation and analyzes the approaches of governments, employers, unions, and women's organizations over the past century. In addition, it explores the debate over the impact of protective measures on the position of women in the labour force.

2. HISTORICAL OVERVIEW OF PROTECTIVE LEGISLATION

The Early History[1]

The first special protective measures extended to women as a group were introduced in Canada during the 19th century. The motivating forces behind this and subsequent legislation designed to protect women were varied and complex: knowledge of earlier reform efforts in England, efforts by labour organizations to prevent women from competing for men's jobs, general societal attitudes that women were the weaker sex and thus in need of protection from exploitation, anxiety about the real and potential threat to female reproductive capacity, fears about the danger to female morality, genuine humanitarian concerns about working conditions.

The introduction of this protective legislation coincided with the early stages of the movement for suffrage and equal social and economic opportunities for women. The main participants in the debate were generally divided between those advocating protection for women workers as a special group and those urging equal rights without special treatment. While a clash over conflicting ideas and approaches seemed inevitable, the expected opposition between labour organizations and social reformers was minimal on this issue. Labour, for example, which came out as a strong advocate of special protection for female workers, found substantial support among certain members of the social-reform oriented women's organizations. These women were often caught between their desire to promote political, social, and economic equality for women and their recognition that the harmful conditions faced by working women required some form of legislative redress.

Some of the earliest exclusionary provisions were in the mining industry. While these provisions were initially aimed at the protection of boys, they were quickly followed by prohibitions on the employment of women in or about mines. By the end of the 19th century both Ontario and British Columbia had restrictions on the employment of women at or about mines.

The early *Factory Acts* sometimes totally excluded women from certain jobs, but generally they only set limits on their working hours and provided special concessions such as lunch breaks, proper toilets and washrooms, less crowded work rooms, and greater attention to ventilation and sanitation. In 1884, Ontario was the first province to enact protective legislation for women in industry; Quebec was close behind in 1885. These *Factory Acts* set the pattern for other provinces: Manitoba in 1900, Nova Scotia in 1901, New Brunswick in 1905, British Columbia in 1908, Saskatchewan in 1909, and Alberta in 1917.

Some provinces also had *Shop Acts* which covered the employment of women, young persons, and children in places other than factories. Here attention was directed to the provision of adequate meal breaks and suitable rooms for dining, good ventilation and cleanliness, proper toilets, suitable seating arrangements for women when not actively engaged, limits on working hours, and Sundays off work. The rationale for these early laws affecting women was the protection of their health and morals, with the emphasis on their role as future mothers.

The Creation of the International Labour Organization (ILO)

The founding of the ILO in 1919, and particularly the Conventions adopted at its first meeting, influenced labour legislation across Canada. All the provinces had sent representatives to the October 1919 Washington Conference, and the Conventions were the subject of several federal-provincial meetings in the early 1920s. In the following decade, several provinces passed laws inspired by the ILO standards.

British Columbia, the first province to react to these standards, passed several protective laws in 1921 with the provision that they would go into effect when other provinces followed suit. Among the five *Acts* were two that affected women in particular: prohibition on night work for women, except in a family business, and maternity protection for women before and after childbirth. In 1922, the maternity protection legislation was enacted in British Columbia, followed shortly by an *Hours of Work Act* establishing an eight-hour day and 40-hour week in the mining, manufacturing, logging, and construction industries.

The earlier provincial *Factory Acts* and *Shops Acts* had already regulated the hours for women in specific employment. In 1918, Manitoba enacted the first *Minimum Wage Act*, empowering a board to set not only minimum wages but also hours and conditions of labour for female employees. By 1920, most provinces had legislation limiting the hours for women to between 48 and 55 hours per week.

The Depression and World War II

During the Great Depression of the 1930s, there was a general decrease in both working standards and wages. When a 1934 federal parliamentary investigation (the Price Spreads Inquiry) examined a wide range of industries and occupations, it found frequent violations, such as excessively low wages and long hours. At this point it was suggested that minimum wage legislation and shorter work hours should be applied to men as well as women. The Parliament of Canada introduced several statutes to deal with the injustices and to give effect to the ILO Conventions on hours of work, minimum wages, and weekly rest. They were declared ultra vires by the Privy Council.

Thus, it was left to the provinces to establish standards to correct some of the abuses faced by male as well as female workers. They enacted provisions for minimum wages and shortened hours for male workers, in the hope that oppressive conditions would be alleviated and that available employment would be spread among more workers. It took another 10 years before much of the shorter hours legislation was amended to apply the same standards to men and women. Some provinces, like Manitoba, still permitted men to work a longer work week before overtime rates had to apply. Minimum wage legislation did not apply to men in other provinces, like Nova Scotia and Ontario.

This period saw efforts to control the problems created by homework, the practice whereby clothing manufacturers give out articles to be made or finished in a worker's (generally a woman's) home. Although earlier efforts had been made to control the sweatshop conditions created by this practice, it was not until the mid-1930s that the issuing of permits and the compulsory registration of workers were undertaken.

In the late 1930s and during the 1940s, voluntary negotiation of wages and hours and compulsory collective bargaining developed. This period also saw increased legislative support for the right of workers to organize and to become union members. During World War II, when wages were controlled by federal government order,[2] unions focused their collective bargaining efforts on hours of work and vacations with pay. By 1950, Ontario, Saskatchewan, Alberta, British Columbia, Quebec, and Manitoba made vacations with pay a legal requirement for most workers. Only Manitoba and Saskatchewan, however, had legislation applying to domestic service. The wartime period also saw renewed efforts to protect the large numbers of women who worked in wartime industries.

The 1950s to 1970s

The 1950s and 1960s marked the beginning of efforts to ensure equal opportunity for women at work. Equal pay legislation was passed by the federal government and several provinces. Various *Factory Acts*, and statutes respecting hours and conditions of work as well as the minimum wage, were replaced by labour codes and employment standards statutes. While women continued to be excluded from underground work in mines and from certain industrial jobs and still faced limitations on their hours of work, there were signs of change. In the 1960s, several jurisdictions moved to change mining restrictions, permits allowing exemptions to night work prohibitions were increasingly granted, and the provinces agreed that the lifting of weights depended more on individual instruction and abilities than on the sex of the worker.

It was in the 1970s, with the report of the Royal Commission on the Status of Women and the celebration of International Women's Year, and in response to the contemporary women's liberation movement, that changes occurred in much of the legislation. From the mid-1960s until the worldwide recession of the mid-1970s, there was a marked acceleration in the growth of the Canadian labour force, with the participation of women being one significant aspect. The economic growth was accompanied by labour shortages in certain industries, leading to an increased demand for female labour. In the early 1970s most of the prohibitions on women workers in mines and at night were revoked; some legislation, such as that governing carrying and lifting, was extended to ensure greater protection for all workers.

The Current Debate

Since the mid-1970s, few legislative restrictions remain although there has been a growth of protective measures with a special emphasis: the protection of the developing fetus. The exclusionary policies adopted by employers, particularly in industries involving exposure to lead and other known reproductive hazards, are directed only to women of child-bearing capacity and, as critics have noted, only to non-traditional areas of work, leaving women to continue their work in hospitals, dental offices, laundries, and other female-dominated workplaces with potential hazards.

Changes in federal radiation standards and provincial health and safety legislation have also been the subject of increased public discussion. On the one side, unions and

women's organizations are pressing for safer workplaces and for protection for male as well as female workers. On the other side, employers and governments argue that, since it is not economically or technically feasible to set standards to protect all workers, then society must focus on ways of preventing women who are pregnant or are of child-bearing capacity from being exposed to dangerous substances.

NOTES

[1] Information for this chapter was drawn largely from the publication by Edith Lorentsen and Evelyn Woolner, *Fifty Years of Labour Legislation in Canada*, reprinted from *Labour Gazette*, September 1950, which provides a survey of early labour legislation in relation to other changes in Canadian society.

[2] P.C. 8253, Wartime Wages and Cost of Living Bonus Order, October 24, 1941.

3. CASE STUDIES ON THE EVOLUTION OF PROTECTIVE LEGISLATION IN CANADA

To provide a better appreciation of the history of protective legislation in Canada, three specific cases will be examined in this chapter: mining, atomic radiation, and night work. Federal and provincial governments' actions and legislation will be discussed in the context of international developments and the positions taken by various groups in Canada. In each case, the impact on women's employment will be considered.

I. Mining

i) Jurisdiction*

Mining legislation in Canada generally falls under provincial or territorial jurisdiction. The exceptions are those mines which have been declared to be for the general advantage of Canada or of two or more provinces. The mines under federal jurisdiction include several uranium mines and coal mines under the Cape Breton Development Corporation. At present, none of the jurisdictions have legislative prohibitions on women in or about mines.

ii) Background

Superstitions about the presence of women in mines were brought to Canada by coal miners of British descent and continued to be held by some miners into the 1970s. It was originally believed that evil spirits carried into the mines under the skirts of women workers caused accidents. As historians now report, superstitions did not keep women in England from underground mining but, by the 1840s, social reformers and government legislation did.[1]

In England, before the 1842 Mines Regulation Act, there was regional and seasonal variation in the recourse to female labour. The employment of women depended on such factors as labour scarcity, the availability of other employment, the attitudes of the working class, and the political power of the employer.

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* As a result of the federal nature of Canada, responsibility for labour legislation and related protective measures is divided among 13 jurisdictions: the federal Parliament, 10 provincial legislatures, and two territorial legislatures.

Federal jurisdiction applies to national, international or interprovincial subjects, including works declared by the federal Parliament to be for the general advantage of Canada, or for the advantage of two or more provinces. In the case of the Yukon and Northwest Territories, the federal Parliament has jurisdiction to enact laws, and has used this authority to delegate to the territorial governments virtually the same power over labour laws as that enjoyed by the provinces.

Evidence of women working underground or at the pit head in 19th century Canada is either non-existent or well-hidden, but not unlikely. Certainly, in the last decade of the century, several provinces saw a need to introduce provisions to specifically exclude women from mining work.[2] What is still needed is evidence of why women were specifically excluded rather than selectively protected, as they were in factories.

iii) Legislative Exclusions

The Ontario exclusion on women was incorporated into the 1890 *Mining Operations Act* along with the underground prohibition on boys under the age of 15. It stated that: "no girl or woman shall be employed at mining work in or about any mine".[3] In 1896, the Ontario Executive Committee of the Trades and Labour Congress reported that provisions in the Ontario *Mining Act* were aimed at "preventing injury of character to employees – especially women, young girls, and children". Seemingly, arguments about morality were included with those on health and safety.[4]

In 1906, a further amendment to the Ontario legislation allowed an exception "in the case of mica trimming work", but the addition of the article "a" before "mining work" seemed to expand the exclusion beyond the actual mine pits and shafts to the processing works which grew up around mines.[5] Other mining provinces gradually included provisions to prohibit the employment of women in mines: Quebec in 1909, Alberta in 1913, Manitoba in 1927, and Nova Scotia in 1927.[6]

iv) International Influences

Little change occurred until Convention No. 45 (Concerning the Employment of Women in Underground Work in Mines of All Kinds) was adopted by the General Conference of the ILO on June 4, 1935. Article 2 of the Convention stated: "No female, whatever her age, shall be employed on underground work in any mine." Article 3 provided some exemptions to this prohibition:

> (a) females holding positions of management who do not perform manual work; (b) females employed in health and welfare services; (c) females who, in the course of their studies, spend a period of training in the underground parts of a mine; and (d) any other females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation.[7]

While several provinces changed their legislation to conform more closely with the ILO stipulations, the period of World War II with its shortages of male labour and demands for increased production for war purposes opened some areas of mining, particularly surface operations, to women.

v) World War II

In British Columbia during World War II, the Consolidated Mining & Smelting Company of Canada (Cominco) encouraged women to seek employment in their plants. In the hydrogen and ammonia plants, they shovelled sand, tested equipment, scrubbed

cathode plates, operated conveyor belts, assayed metals, shaped metal clips, and did numerous other tasks. In Kimberley, women did not work in the Sullivan Mine, but did replace men in the concentrator.[8]

In Manitoba, an August 1942 Order-in-Council authorized the Director of Mines to permit the employment of women in work about the surface of mines and in metallurgical works.[9] It continued the prohibition on underground employment, however.

Some Ontario mining companies followed this path when Orders-in-Council were issued under the now repealed federal *War Measures Act* permitting the employment of women by the International Nickel Company and Algoma Ore Properties Limited.[10] The regulations for Ontario also stipulated that women could be employed only on the surface and contained certain health and welfare provisions. Approved occupations included office and clerical work, elevator and truck operators, warehouse clerks, binattendants, belt tenders, oilers, samplers, reagentmen, and analysts.

As one Inco official remembered, almost 40 years after the war: "We had women operating the casting wheels, we had women making boxes, women on the sewing machines, women in the storehouse, counter girls. We had a couple of darn good machinists in the machine shop, running lathes and woodworking tools; they did a very good job for us." In his view, the government had permitted their employment and the government forced their release: "Men were coming back from overseas: there was a shortage of jobs and there was no way they were going to let housewives hold down jobs that men needed."[11]

vi) Ratification of the ILO Convention

The issue of women in mining was brought into the public arena anew in the mid-1960s as a direct consequence of Canada's participation in the ILO. Although there was regular discussion and consultation about ILO matters between the federal government and the provinces, because of jurisdictional divisions on labour matters, Canada had been able to ratify only a few of the ILO Conventions. By 1964, obstacles had been overcome and the discrimination Convention (No. 111) was ratified with the agreement of all the provinces.[12]

Ironically, the next ratification effort was directed at Convention No. 45, which restricted the employment of women. Although the federal government wanted the Convention ratified in 1965, as a contribution to International Cooperation Year, it was September 1966 before this goal was accomplished.[13] A delay resulted when it was discovered not only that the necessary prohibition was absent from the Yukon Territory *Mining Safety Ordinances*, but that the Northwest Territories *Mining Safety Ordinances* were about to be amended to permit women underground.[14]

There is evidence that certain parts of the federal government recognized the discrimination inherent in the Convention. Edith Lorentsen, head of the Legislative Research Branch at the Department of Labour, apparently spoke out against ratification,[15] and officials working on the amendments to the Northwest Territories *Mining Safety Ordinances* saw the prohibition on women "as unnecessary and an apparent discrimination in employment".[16] They were overruled by others, however, who believed

that women "should not engage in underground mining operations" and did not see the contradictions in their ratification efforts.[17]

vii) The British Columbia Case in 1967

During the budget debate in the British Columbia Legislature on February 15, 1967, the Minister of Mines and Petroleum Resources introduced a bill to permit women to work in mines. The bill, which had been drafted by the Legislature's Mining and Railway Committee, followed suggestions brought back by the Chief Mining Inspector after a visit to Sweden.[18]

The key section of the legislation stated: "No female shall be employed underground in a mine except by the approval of the Chief Inspector."[19] The Minister of Mines explained that female workers such as computer operators and technicians could now work underground in carefully supervised, laboratory-style conditions. As he emphasized: "they won't be handling picks and shovels ... so much of today's mining is automated ... it is possible for a woman to work at a nice, clean station underground pushing buttons all day long".[20]

Newspaper accounts across the country alerted the federal Department of Labour to actions by British Columbia, and at least one departmental memo suggested that pressure to change should have been directed at the ILO rather than at the provincial government. The memo suggested two possible courses of action: "(a) persuade B.C. to amend its Bill to conform with the Convention or (b) initiate action with the ILO to revise the Convention which after 32 years is rather obsolete with the advance of automation in mining operations".[21]

It was apparently easier to take the first course, and consequently the British Columbia government was reminded that Canada was a signatory to Convention No. 45, and that all provinces had assured the federal government that they would abide by its provisions. Accordingly, the proposed legislation was changed to conform with the ILO Convention; all women except those in managerial positions not requiring manual work, those in health or welfare services, students, and occasional visitors were excluded.[22]

By 1973, British Columbia was back to its earlier legislative position: retain the prohibition on the employment of women underground except with the Chief Inspector's approval. The reference to approval being issued only in conformity with the ILO Convention was struck out.[23] In the same year, Similkameen Mining Co. employed six women to drive 100-ton trucks at its copper-silver-gold mine near Princeton, B.C., and was considering hiring women in the mills.[24] By 1975, the prohibition was gone entirely.[25]

viii) Mining in the 1970s

During the mid-1970s, many mining provinces either changed their legislation to remove prohibitions or indicated their intention to do so. From the numerous accounts of women in mining work in newspapers, mining journals, and government documents, two reasons for the employment of women emerge: International Women's Year and labour shortages.

Of these two reasons, the strongest revolves around the shortages of labour and problems experienced by the mining industry. In 1974, the Mining Association of Canada surveyed its members to gather statistics on the problem.[26] Labour shortages were attributed to high staff turnover caused by such factors as the isolation and lack of amenities in mining towns, the traditional mobility of miners, and competition from other jobs offering higher wages and better working conditions. Some mining companies blamed government and the support of high unemployment insurance benefits, manpower-retraining programs, and relocation subsidies.[27]

The labour situation varied between the mining provinces. Nova Scotia, for example, had a contraction in employment due to a decline in coal mining, while Newfoundland had an increase due to base metals.[28] One study showed that British Columbia had a much higher turnover rate than any other major mineral-producing province.[29]

Many of the arguments for the employment of women came from employers. In 1974, Sherritt Gordon Mines hired women in their Ruttan open mine in northern Manitoba. They saw the employment of women as one way to maintain a good work force in the face of tough competition from higher-paying jobs in pipeline construction and the Alberta tar sands development.[30] An earlier newspaper article reported that one-quarter of the applicants for all the advertised trade and surface jobs were women; of these, a large number were married.[31] To attract married couples, "Sherritt-Gordon has made housing provisions for married couples at its Ruttan Lake site in Manitoba by building a duplex home which ... a married working couple with children could rent part of to someone who might look after the children."

In 1975, Quebec Cartier Mining employed 35 women for various tasks at their mine at Lac Jeannine and eight others at Mont-Wright. They reported considerably less turnover in their work force. "Such factors as remoteness, few social activities, and working conditions cause workers in this type of mine to stay only short periods with the same employer. By allowing miners' wives to work, manpower becomes more stable."[32]

A report from Quebec noted some resistance from male employees when Opemiska Copper Mine considered hiring miners' wives as truck operators, work supervisors, and for other jobs. This resistance was because "Some believe that women will take over all lighter jobs, which means that miners with many years of service will not be able to profit from such positions in recognition of their years of service."[33]

Women were attracted by the salaries: at that time, the second highest average weekly wage of all industries. As one woman in B.C. commented: "I was just looking for a good job so I could support my two children. Where else can you get such good money and benefits?"[34] In a 1975 submission to the Ontario Royal Commission on the Health and Safety of Workers in Mines, the provincial Women's Bureau argued for a repeal of protective legislation, stating that women wanted to have a chance at the higher wages offered for underground mine work.[35] Other women liked the challenge and opportunities. As one woman diamond driller stressed, "It's no longer an issue of whether or not women can also do the work ... they are doing the work."[36]

ix) Denunciation of the ILO Convention

The increased evidence that women were being employed in surface work and the move by many provinces to remove the underground prohibitions pushed the federal government to reconsider its ratification of Convention 45. The issue was discussed at a May 1974 meeting of federal and provincial deputy ministers of labour, along with other ILO questions, and it was decided that the government of Canada would submit the question of "de-ratification" to provincial governments, workers, and employers.[37]

A June 1975 report by Canada to the ILO gave the following comment on Canada's position regarding Convention 45:

> In Canada in recent years the very idea of protective legislation restricted to women (including the prohibition of underground work of women in mines) has been challenged as impeding progress towards equality of opportunity and treatment of men and women in employment. In addition, technological progress has alleviated at least some objectionable features of the working conditions in mines.[38]

In September 1975, at a tripartite meeting on ILO questions, the issue of denunciation was discussed and various positions were put forth. One report of the meeting had the employers' representative in favour of denunciation, saying that "with mechanization women were excellent workers", the Ontario government representative thinking that denunciation might "urge the ILO towards a desirable revision of the Convention", and the workers' representative opposing denunciation and calling it "ridiculous". Sweden had recently denounced the Convention, and the workers' representative claimed that it had taken this action "only because women worked in the cafeterias".[39]

The workers' opposition went unheeded, and in March 1978 the federal Minister of Labour wrote a letter to all provincial ministers of labour requesting their agreement for the denunciation of the Convention. He advised them: "My impression is that generally speaking women in Canada no longer support the concept of legislation which provides them certain types of protection against hazards in employment if this protection works to deny them equality of opportunity in employment."[40] Finally, in May 1978, Canada denounced the Convention, explaining:

> The Government of Canada is aware that at the time of its adoption, Convention 45 was intended to prevent exploitation of women workers and thus was considered a step toward social progress. However, it is now considered within the various jurisdictions of Canada that the Convention limits the employment opportunities of women and that it is, therefore, in contradiction to the principle of equality of treatment and opportunity between men and women workers to which the Government of Canada attaches great importance.[41]

x) Influences on Women's Employment in Mining

The removal of legislative prohibitions on women in mining appears to have had a limited impact on their employment. For example, the 1971 and the 1981 census figures for mining and quarrying, including oil and gas fields occupations, reveal a limited

increase in numbers. Thus, while the percentage of growth for women was more than 300 percent, the actual number of women went from 380 in 1971 to 1 625 in 1981. Labour force figures for the 1980s reveal a decrease in overall employment figures, from a high of 78 000 in 1981 to a low of 60 000 in 1983. In 1984, employment climbed again and so did the number of women, only to fall again in 1985.[42]

Two factors have been cited as influencing these changes: the boom-and-bust cycles common to mining, and the continuing discrimination against women in non-traditional areas of employment. It has been noted, for example, that the pattern of oscillation between labour shortages and labour surpluses is more dramatic in mining than in any other major industry. Superimposed on this boom-and-bust cycle has been the increased mechanization underground and increased automation of surface operations. Others stress the continuing sexism in hiring policies.

A study of Inco by Wallace Clement reveals the impact of boom-and-bust cycles, in this case created by a weak nickel market, on women's employment. At Sudbury, where approximately 100 women worked for Inco as hourly employees, they were all let go in 1978. In the Pipe Mine near Thompson, Manitoba, "in the summer of 1977 about six women worked in the pit, a decline from a high of 20 when the mine was on three shifts. No women now hold bid jobs (those requiring qualification and seniority) on trucks because of their relatively low seniority."[43]

Several observers of the mining industry have noted the resistance of both male workers and employers. Thus, in the mid-1970s, while many employers reacted favourably to the employment of women and indeed encouraged it to overcome labour shortages, others were less positive. As one manager explained, "there is no real labour shortage here ... there is a good supply of unemployed men so we aren't interested in hiring women. There are many types of work in the industry that have physical limitations ... in general, the opinion is that women are less adaptable to change."[44]

Where women are still excluded from certain areas of mining, the justification tends to be economic. For example, a 1982 study stated that at Inco, women were excluded from sections of the nickel and the silver refineries because of fears that pregnant women will be exposed to substances that might injure a developing fetus* and lead to legal liability for the company.[45] In other areas, senior Inco officials point to the lack of physical facilities for women and the extra cost of rectifying the situation.[46]

One female steel worker at Inco in Sudbury recalled the initial reactions of some of her co-workers: "They used to say, 'What do you think you're doing here, anyways? This is no place for a woman. This is a man's job. Don't you know that you're taking away a man's job. A man has to support his family.'"[47] But as she also observed, after she earned their respect as a capable worker, they supported her as they would any other worker.

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* This situation may have changed somewhat with the ruling of the Ontario Human Rights Board of Inquiry *Wiens* v. *Inco Metals Co.*, 1988. See Section 4 of this report.

II. Work Involving Exposure to Radiation

i) Jurisdiction

Protection from radiation emanating from radioactive substances is a federal concern as is the production, application, and use of radiation. Protection from radiation arising from radiation-emitting devices is divided between federal and provincial jurisdictions. The federal Parliament is responsible for production standards for the devices across the country, and for safety measures relating to the installation and use of the devices in federal undertakings. Safety measures relating to installation and use of radiation-emitting devices is a provincial concern.

ii) Background

In 1946, the *Atomic Energy Control Act* created the Atomic Energy Control Board (AECB) to control materials required for the production of atomic energy. The specifics of this control were found in the *Atomic Energy Control Regulations*, proclaimed in 1947.[48] Initially, the *Regulations* contained only a general precautionary statement about the protection of persons and property against injury and damage. By April 1957, the minutes of AECB meetings included a brief discussion pointing out the need to include a health and safety code.[49]

This move to develop specific health and safety measures was triggered by two provincial bills introduced into the Ontario legislature in 1957. The bill to amend *The Factory, Shop and Office Building Act* proposed a change in the definition of "factory" to include any premises where any form of nuclear energy is used, while the bill to amend the *Department of Labour Act* authorized the making of regulations to govern the use of ionizing radiation in industry and commerce. The AECB considered it desirable to have uniform national regulations to protect workers and other members of the public who might have contact with ionizing radiation and, to this end, engaged the advice and cooperation of experts at the Radiation Protection Division of the Department of National Health and Welfare.

In 1960, the revised *Regulations* included Part VI Health and Safety Precautions, outlining requirements for the employment of atomic energy workers, permissable exposures, protective procedures, protective instruments and equipment, warning labels, and signs, records, and reports.[50]

At this time, "atomic energy worker" was interpreted as meaning "a person whose regular business or occupation requires him to produce, store, use, dispose of, or approach quantities of radioactive prescribed substances in excess of the scheduled quantity". Employers were prohibited from employing as an atomic energy worker any person who was under 18 years of age, who was known to be pregnant, or whose health was such that employment as an atomic energy worker would be undesirable.

iii) The Radiation Protection Convention

In 1960 the ILO adopted the Radiation Protection Convention (No. 115). Included among its main provisions was one requiring that maximum permissable doses of radiation be fixed for various categories of workers. Recommendation No. 114 (Concerning the Protection of Workers against Ionizing Radiations), also adopted in 1960, was more specific about women workers. Paragraph 16 states, "In view of the special medical problems involved in the employment of women of child-bearing age in radiation work every care should be taken to ensure that they are not exposed to high radiation risks."[51] There is, however, no clear indication in archival files of the impact of the Convention and Recommendation on developments in Canada.

iv) The 1974 Amendments to the Atomic Energy Control Regulations

For the first time, in 1974, the *Regulations* differentiated between male and female workers with respect to the specifications for the maximum permissable dose of radiation. An atomic radiation worker, the term now used, meant "any person who in the course of his work, business or occupation is likely to receive a dose of ionizing radiation in excess of any dose specified in column IV of Schedule II".

A separate category for female atomic radiation workers of reproductive capacity was created with the provision that, for these workers, the "dose to the abdomen shall not exceed 0.2 rem per two weeks, and if the person is known to be pregnant, the dose to the abdomen shall not exceed 1 rem during the remaining period of pregnancy".

While all workers had a yearly permissable maximum dose of 5 rem for the whole body, gonads, and bone marrow, female workers of reproductive capacity were limited to 1.3 rem per quarter year compared with the 3 rem limit for other atomic radiation workers.

Records relating to inclusion of differential standards for male and female atomic radiation workers in 1974 are not currently available. A speech given by Dr. E.G. Letourneau of the Health and Welfare Radiation Protection Bureau, however, provides some history.[52]

According to his search of departmental files, a Redrafting Committee for Revision of the Atomic Energy Control Regulations was set up in 1966. The primary impetus for change at that time seems to have been the influence of the International Commission on Radiological Protection, but it was not until December 1967 that the issue of women was discussed. At this time, the secretary stated: "It was the general opinion that ICRP recommendations on employment of pregnant women were too complex to state in the Regulations."

The International Commission on Radiological Protection had recommended in 1965 that occupational doses to women of reproductive capacity should be limited to 1.3 rem per quarter year and that when a pregnancy has been diagnosed arrangements should be made to ensure that the dose to the fetus should not exceed 1 rem during the remaining period of pregnancy.[53]

After various proposals from committee members representing the collective expertise of the Radiation Protection Bureau, the AECB, and Atomic Energy of Canada

Limited, these levels were adopted by Canada in introducing differential standards for female workers of reproductive capacity.

The prime difference was the attempt to ensure that the dose be delivered at an even rate. Draft regulations of September 1968 called for a very restrictive 0.1 rem per week, but this was challenged in November 1969 by experts from both Atomic Energy of Canada Limited and the Radiation Protection Bureau. They argued that it was unnecessarily expensive to force a change of dosimetry films at least once per week. The 1974 regulations set a dose rate per two weeks.

v) Effect of the Regulations

Officials with the AECB emphasized that the focus was deliberately on reproductive capacity, not reproductive age. Thus, it was left to employers to decide how to deal with women who had undergone hysterectomies or tubal ligations or who practised effective birth control. The emphasis was on a uniform, gradual rate of exposure based on the sensitivity of a developing fetus.

Under the *Regulations*, the employer was responsible for the prevention of overexposure of workers and, when faced with the possibility of exposing a pregnant woman to higher than acceptable levels, most took the conservative route and simply refused to hire women. As Letourneau explained, the *Regulations* "made the employment of female atomic radiation workers in the reactor environment an administrative nightmare and completely impractical. This approach excluded women [of reproductive capacity who are] 73 percent of the female work force and 31 percent of the total work force, from interesting and rewarding work in the nuclear industry."[54]

Pressure to change the *Regulations* came initially from women who were seeking employment or advancement within the nuclear industry. In 1980 and 1981, complaints were filed with the Canadian Human Rights Commission by a woman who was denied employment as a research technician at Ontario Hydro and a woman who was refused work as a mine-helper trainee by Eldorado Nuclear.[55] In addition, in 1984 a woman employed by the New Brunswick Power Commission wrote to the AECB saying that she intended to seek sterilization as the only way to surmount the *Regulations* which she perceived to be preventing her career advancement at the Point Lepreau nuclear reactor.[56]

vi) Proposed Amendments to the Regulations

In 1983, when the Atomic Energy Control Board (AECB) proposed amendments to the *Regulations* affecting exposure limits for female atomic radiation workers, they issued two consultative documents outlining their position and invited a public review of their proposed changes. Consultative Document C-47 contained the proposed amendments, while Consultative Document C-78 provided explanatory notes on the changes and how the AECB would apply them.[57]

Many groups including government, labour, employer, and women's organizations submitted written briefs to the AECB outlining their positions on this issue. Most of the submissions dealing with the issue of female atomic radiation workers supported a

change in the *Regulations* to remove the employment barriers for women. There were noticeable differences, however, over the direction of change and the additional measures which should accompany the change.

vii) Views of Labour

Labour groups tended to argue that exposure rates for all workers should be lowered; that both male and female workers who were trying to conceive and women who were pregnant should have the right of reassignment with guarantees of job income security; and that women should not have to choose between reproductive health and employment rights.

Thus, the CLC stated that "all new regulations and dose limits should be an absolute improvement on protection afforded by existing standards, without exception. Workers should be less exposed to radiation as a result of the changes, not more so."[58] The CLC estimated that approximately 200 000 workers are exposed to radiation in the workplace and, of these, 80 000 to 90 000 receive significant exposures as part of their job.

Arguing that all workers are not the same, they proposed that the *Regulations* should further limit the exposure of special categories of workers, such as those in their reproductive years, pregnant workers, and minors. For them, the confirmation and establishment of health and safety rights (including the right to refuse unnecessary exposures, the right to full disclosure of monitoring results, the right to transfer, the right to income maintenance, and the right to prompt and adequate compensation) would be the most effective way to involve workers in radiation protection.

Acknowledging that the proposed *Regulations* represented the AECB's attempt to resolve human rights problems, they stressed their disagreement with the proposed direction of change. In their words,

> that the Board should be concerned about the question of equality of opportunity in the workplace is commendable. That they should choose to interpret this as justification for permitting an equal opportunity to exposure to a known carcinogen, genotoxin and teratogen is not. Equality of opportunity must be based on equal opportunity to a safe workplace not equal opportunity to biological harm.[59]

These arguments were reiterated by other unions. The National Union of Provincial Government Employees, for example, stated that "the current 5 rem per year limit represents an unacceptable level of risk to the health of these workers and their families".[60]

The United Steelworkers of America observed that "more than 4 000 of our members work in the Canadian nuclear industry, primarily in the uranium mines around Elliot Lake, Ontario, and Key Lake, Saskatchewan, and in Eldorado's Port Hope refinery". They argued that earnings protection was essential, a matter of simple justice, for workers removed from regular jobs in order to meet the dose limits.[61]

While emphasizing that removal was not acceptable as a routine method of limiting doses, they outlined three principal ways that earnings protection during removal would

be a positive feature of regulatory control. In their view, earnings protection would "provide an additional incentive to the employer to control doses through proper ventilation and other acceptable methods", ... "improve worker cooperation with environmental and medical surveillance programs", and "eliminate a cruel dilemma faced by pregnant workers under the proposed regulation".[62] The cruelty was in forcing a woman to choose between reporting her pregnancy with the possibility of loss of needed income or concealing it as long as possible at the risk of additional exposure and legal charges.

The Energy and Chemical Workers Union represented some 1 000 workers covered by the *Regulations* in their jobs at Atomic Energy of Canada facilities at Glace Bay, Nova Scotia, Chalk River, Ontario, and Ottawa, Ontario, at the Amok uranium mine at Cluff Lake, Saskatchewan, and at the Combustion Engineering nuclear fuel fabrication plant in Moncton, New Brunswick. The union's brief noted the difficulties inherent in protecting female workers but emphasized that "the only way to eliminate discrimination is to promulgate standards which provide equal protection to both sexes".[63]

The brief pointed out that the proposed *Regulations* did nothing for a woman who suspects she is pregnant but cannot have it medically confirmed. There was no right to refuse exposure based on suspicion of pregnancy. Instead of enhancing women's rights, the *Regulations* simply forced women to choose between unemployment and risk of injury to an unborn child. In the union's view, it was "totally unacceptable for a regulatory agency which bears such a weighty responsibility to simply transfer its burden to each individual woman. The impact of the decision on future generations cannot be so easily delegated."[64]

The brief to the AECB by the Canadian Union of Public Employees Local 1000, the Ontario Hydro Employees' Union, noted that it represented 17 000 members employed by Ontario Hydro, 2 000 of whom were involved in radiation work. It opposed the removal of the quarterly limit for worker exposures, arguing like the CLC that "limits on exposure over short time periods are one of the most effective ways that we can keep risks in line with good radiation protection principles and avoid discrimination against women in employment".[65]

viii) Views of Employers

Employer groups agreed with the AECB that exposure limits for women should be set at those previously established for male workers. In addition, employers expressed concern about the possibility of legal risk arising from injury to a fetus and requested that the AECB investigate possible compensation mechanisms. Their views on exposure limits appeared to have been based primarily on economic grounds. As one Ontario Hydro manager explained, when asked about reducing the radiation levels for all workers, "That would require extensive redesign of the whole plant. It would not be practical. It would increase the number of staff and capital costs. We're concerned about what the taxpayers would have to pay."[66]

The Canadian Nuclear Association, in a submission to the AECB, reported the concern of senior executives of uranium mining companies about the financial impact of applying the proposed radon daughter, thoron daughter, and gamma exposure limits. Referring to a preliminary study, the letter noted that "the incremental cost of

implementation would be of the order of millions of dollars per person-sievert. This is two orders of magnitude larger than values that have previously been suggested for a justified ALARA cost."[67]

Financial considerations were also a concern for employers like the Royal Victoria Hospital. In this instance, the problem area was the proposed definition of atomic radiation worker (ARW) and the possibility that a licensee might have to expand the number currently designated as such. The hospital pointed out that, in the event of an accident, any hospital worker exposed to a radiation source could receive a dose in excess of the limit for non-atomic radiation workers. This included those in radiotherapy, nuclear medicine, or diagnostic radiology departments, research workers handling radioisotopes, and nurses caring for radioactive patients. In the hospital's opinion, "hospitals simply cannot afford to designate a large number of employees as ARWs, nor is there any evidence that this is necessary on health or safety grounds".[68]

Among the employers' submissions were several pointing out the legal risk facing corporations in the radiation industry. Eldorado Resources Limited and Canadian General Electric asked that employers be relieved of responsibility in cases where the female ARW has not informed them of her pregnancy. The Royal Victoria Hospital requested that the worker sign a statement accepting responsibility for any adverse effect on the embryo or fetus during any undeclared period of pregnancy. Ontario Hydro stated quite directly, "With respect to female atomic radiation workers, there is a need to consider the possibility of litigation arising from cancer or damage to fetuses. Compensation mechanisms should be investigated."[69]

ix) Views of Women's Groups

Two briefs from women's organizations indicate the divisions that exist and are accented by efforts to remove barriers to women's employment opportunities. Women in Science and Engineering/Femmes en sciences et en génie is a national organization formed in 1977. The Task Force on Radiation Exposure and the Atomic Radiation Worker was composed of representatives from the Canadian Research Institute for the Advancement of Women, Voice of Women, and the Ecology Action Centre in Nova Scotia.

While both organizations promote equality for female workers, they differed on the issue of fetal protection. Women in Science and Engineering argued that

> women undertaking radiation work will be sufficiently well educated and motivated to consider the welfare of their children, and that reporting could be handled by an "honour system". This would be consistent with the present practice whereby individual workers are made responsible for their own radiation protection.[70]

The Task Force on Radiation Exposure and the Atomic Radiation Worker argued that

> it is quite conceivable for a woman to be in what is, ethically speaking, an internal conflict of interest situation in which the economic benefits to her of being an atomic radiation worker are in conflict with the best interests of her child, for whom, since there is no benefit to be gained, the right choice is not

to risk any chance of genetic or health damage, however small. It is not ethically acceptable to require such choices.[71]

x) The 1985 Amendments

Amendments to the *Regulations* in April 1985 removed the special category of limits for "female atomic radiation workers of reproductive capacity" and stipulated that women workers are subject to the same limits of exposure as men except during a period of pregnancy. Women are now required by the *Regulations* to inform an employer as soon as they are aware of the pregnancy.[72]

The employer must inform any licensee where the pregnant worker is engaged, and "the dose to the abdomen of a pregnant atomic radiation worker after the licensee is informed of the pregnancy of that worker shall not exceed a total of 1 rem, accumulated at a rate of not more than 0.06 rem per two weeks".

xi) Influence on Women's Employment in Work Involving Exposure to Radiation

Exposure to ionizing radiation is a factor for women who work in the health sciences as nuclear medicine or X-ray technologists, dentists or dental assistants, chiropractors or assistants, nurses, physicians, or researchers and in industry as nuclear reactor workers, operators of X-ray diffraction equipment, fuel fabrication employees, or technicians manufacturing radionuclides. Uranium mining is another area of employment where exposure can be high.

Census figures for 1971 (three years before the differential rates were included in the *Regulations*) and for 1981 (four years before the amendments to permit female workers to receive the same doses as male workers) show the virtual absence of women as nuclear engineers (none in 1971 and only 45 in 1981), while large numbers were employed as radiological technologists and technicians (4 730 in 1971 and 7 415 in 1981).[73]

Other sources have reported numbers relevant to particular workplaces or employment situations. When women were prohibited from certain jobs in Ontario Hydro, for example, it was suggested that more than 2 000 jobs were involved. A 1982 newspaper report noted that "of the 5 400 nuclear workers in the province, 400 were women".[74] The same article noted that there were about 6 500 employees in 14 nuclear inseallations in Ontario, Quebec, and New Brunswick.

After the complaint against Eldorado Nuclear was filed with the Canadian Human Rights Commission, the Saskatchewan company initiated a monitoring program and hired 14 women to work in the mill and mine.[75]

In a separate sex discrimination complaint filed by the Women's Association of the Whiteshell Nuclear Research Establishment in Pinawa, Manitoba, against Atomic Energy of Canada, a Crown Corporation, it was noted that in 1982 there were no women in any of the three levels of management and only 14 percent of all technical positions were held by women.[76]

III. Night Work

i) Jurisdiction

Both the Parliament of Canada and the provincial legislatures have jurisdiction to enact labour laws relating to hours of work. Since night work laws impose certain restrictions on contracts between employers and workers, they generally fall under provincial authority.

ii) Background

On March 1, 1884, as a result of the passage of the *Factories Act*, Ontario became the first jurisdiction in Canada to enact provisions for the protection of women and children.[77] The Act limited the hours of work for female and child employees to 10 hours per day and 60 per week. Eventually women were prohibited from working before 7:00 a.m. or after 6:00 p.m.

The success of this provincial initiative followed seven unsuccessful federal attempts at similar legislation.[78] The Ontario bill apparently received little debate in the legislative assembly, no editorial comment in the major provincial newspaper, and no mention in the annual law report on important Ontario legislation.[79]

The legislation did not go into force until a year after it was passed, at which time similar legislation was enacted in Quebec.[80] The Quebec legislation also had specific prohibitions on night work. Similar provisions appeared in the 1888 *Ontario Shops' Regulation Act*,[81] which among other measures prohibited young persons from working in shops before 7:00 a.m. or after 6:00 p.m. This night work prohibition was extended in 1897 to apply to women also.[82]

In spite of the legislation, night work continued with little interference. In its report in 1889, the Royal Commission on Labour and Capital called public attention to the long hours worked by women and children in the factories and mills of Quebec, Ontario, and the Maritime provinces and noted that enforcement of the existing legislation was "a delusion and a joke". In 1889, Jean Scott reported that employers set up night shifts for women in violation of the *Factory Acts*.[83]

iii) International Influence

In 1900, the International Association for Labour Legislation was formed and sought to address the issue of protective legislation in industrialized countries. From its International Labour Office in Basel, Switzerland, it initiated a study of night work among women, which led to a call for its prohibition.[84]

Canada contributed by supplying copies of existing provincial labour legislation, and Ontario, Manitoba, Quebec, and Nova Scotia are included in the 1904 Memorial among the countries restricting night work for women.[85] Manitoba in 1900 and Nova Scotia in 1901 had passed legislation to regulate the industrial work of women, and both had included prohibitions on their night work. New Brunswick, British Columbia, and Saskatchewan followed shortly as the conditions of women's work in industry were

brought to the fore by reform-oriented groups. Alberta was moved to act by conditions of World War I.[86]

In 1906, at a Conference in Berne, the International Association for Labour Legislation succeeded in adopting a Convention limiting night work for women.[87] When the ILO met in Washington in October 1919, Convention No. 4 included the following provision: "Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed." At the same session, Recommendation No. 13 on restrictions for women in agriculture was adopted.[88]

iv) Canada's Efforts

In the period between the adoption of these two Conventions, Canada had witnessed and participated in a number of events which affected women's work. World War I brought an increase in women's work in industry, particularly in munitions. Employers used the need for increased war production as an excuse to lengthen the working day for both men and women, and during this period numerous exceptions to the night work prohibitions were granted.[89]

One *Toronto Daily Star* article about female munition workers and health aspects of the employers' demand for longer hours drew comment in the House of Commons. The women had been dismissed from their work for refusing to work a 14-hour shift and were seeking public support. In the interview, they noted that "one of the girls was too sick to come with us. She has been working five nights night work and is just dying on her feet. The oil has got into her system."[90]

In 1923, a dominion-provincial meeting was held specifically to deal with ILO questions. The delegates thought that Convention No. 4 concerning the employment of women at night should be "accepted as a basis for securing uniform legislation within each province", but little appears to have been done to follow up.[91]

It is difficult to assess the impact of night work prohibitions on women's employment during this period. As one study of women's work in the 1920s noted, female labour was visible in several sectors of industry. Manufacturing, for example, was a major employer, including almost 34 percent of Montreal's female workers in 1921. In the manufacturing sector across the country, women were generally found not only in particular kinds of industries but also in distinct operational areas within the individual industries. Thus, while relatively large numbers of women and girls were hired by the clothing industry, they worked at the lower wage jobs, such as buttonhole sewing, while their male counterparts made pockets at a higher salary. Other low-wage, highly competitive industries (like textiles, shoes, and food-processing) hired women, while higher wage, capital-intensive firms making automobiles, electrical machinery, farm equipment, and liquor did not.[92]

v) Debate over Convention No. 4

In 1933, at the 66th Session of the ILO Governing Body, proposed amendments to the Convention concerning the employment of women were discussed.[93] This followed a decision by the Permanent Court of International Justice that Convention No. 4 applied to

all women workers, not just those engaged in manual labour. The British delegates at this session raised the point that women trained as electrical engineers were prevented from being placed in charge of any electrical station or substation where night duty was required.

Some delegates wanted to exclude all women who were engaged entirely or principally in commercial work, office work, or other similar work. Other delegates noted that demands by some women's organizations to remove special protection were countered by demands from female labour groups to keep special protections in place. The general emphasis was to exclude from the prohibitions any women not involved in manual labour (e.g., office workers, teachers, health workers, and welfare workers).

In Canada, provincial governments and various non-governmental bodies had been canvassed about their opinion on suggested revisions to the Convention, but no major objections seem to have been registered. The Saskatchewan Minister of Labour, while pointing out that the province was largely agricultural and any amendments would not be of great importance to most women, expressed the opinion that "women occupying or aspiring to managerial, supervisory, or confidential positions should be given equal status with men similarly situated".[94] Charlotte Whitton, Executive Director of the Canadian Council on Child and Family Welfare, agreed with the suggested revisions but then went on to say: "Surely, with the development of the process of mechanization, we should not close our eyes to possible future developments that might entirely eliminate night work."[95]

As a result, Convention No. 41 (revising Convention No. 4) was adopted on June 4, 1934, excluding from the scope of the Convention "women holding responsible positions of management who are not ordinarily engaged in manual work". The revision also substituted the hours between 11:00 p.m. and 6:00 a.m. for the previously designated period, between 10:00 p.m. and 5:00 a.m.[96]

vi) World War II

World War II witnessed a large-scale recruitment of women into the labour force and an early relaxation of legislation prohibiting their night work. In March 1940, Quebec Order-in-Council No. 1257 granted exemptions to plants working on war contracts.[97] As reports in the *Labour Gazette* indicate, other provinces were also adjusting their night work legislation to meet the increased wartime needs of industry. Alberta, in 1941, rescinded its prohibition on night work for the duration of the war.[98]

In March 1942, the federal Minister of Labour asked the Confederation of Catholic Workers of Canada for their views concerning night work for women, and in May 1942 they submitted a report. They wanted modifications to the methods of scheduling work, noting their preference for a "three-shift schedule which automatically limits the working period". When this was not possible, they recommended a two-shift schedule with a diminished and fixed maximum working period. They suggested a rest period for women in the middle of each half-day's work, and an increased hiring of men of non-military age or of those rejected for military service for work in munition plants.

They had strong views on the employment of married women with young children, emphasizing that they "should not be admitted in a war factory, and still less in a night

shift". They questioned: "Is it to be tolerated that mothers should leave their children with maids while they go to work in factories where they can compromise their health and that of their children?"[99]

vii) Another Revised Convention

Convention No. 89 (revising Convention No. 41) was adopted on June 17, 1948, to clarify the prohibitions. It exempted "women holding responsible positions of a managerial or technical character; and ... women employed in health and welfare services who are not ordinarily engaged in manual work". It defined the term "night" as "a period of at least eleven consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning". Exceptions were permitted for women in family enterprises and in the event of a national emergency.[100]

viii) Involvement of the Women's Bureau

In 1954, the Women's Bureau was established at the federal Department of Labour, and in 1957 it published the first of a long line of fact-books on Canadian women and their work.[101] In this year, women made up one-fifth of the workers employed in manufacturing but more than half of the work force in the leather, textile, clothing, and tobacco industries. Night work restrictions were in force in four provinces – Alberta, Saskatchewan, Ontario, and Quebec – but could be relaxed with a permit from the inspector or suspended at the discretion of the Minister of Labour. By this time, some provinces required that an employer furnish transportation for women working late hours.

In January 1963, the Women's Bureau *Bulletin* was devoted to a discussion of legal restrictions on women's night work. It stated: "In line with the trend towards repeal of provisions of labour laws dealing specifically with women and their replacement by provisions applicable to all workers, many of the provisions of factory laws regulating working hours and prohibiting night work of women and young persons have now been repealed."[102]

At this time three provinces – Ontario, Quebec, and Saskatchewan – prohibited night work of women through provisions in *Factory Acts*. Exemption permits could be secured by employers under specific conditions. The *Bulletin* records that, in 1960 in Ontario factories, 1 789 permits for extended hours and 859 permits for double shifts were issued, while 1 803 permits were issued for restaurant night work. In Quebec, 178 permits allowed 20 434 women to work hours before 6:00 a.m. or after 6:00 p.m., while in Saskatchewan 20 permits were granted for extended hours.[103]

Four provinces – Alberta, Manitoba, Ontario, and Saskatchewan – required the employer to provide free transportation for the night worker to her place of residence.

The *Bulletin* noted that shift work was increasing in certain industrial areas, especially in heavy manufacturing where men are traditionally employed, and in certain office areas because of the installation of electronic equipment. It noted that "special restrictions on night work for women may put them at a disadvantage in competition for

jobs in which men may work at night" and, through a series of questions for discussion, raised the issue of whether special laws are needed to protect women.

ix) Employing Women with Families

In the same year, the Government of Canada responded to an ILO questionnaire on the employment of women with family responsibilities for the 1964 International Labour Conference. On the question of arrangement of working hours, the official response noted the need for attention to the advantages of special arrangements for working hours, "provided they may be made without detriment to their status in employment".[104]

At least one departmental assessment had raised the point that special measures might harm women in the work force. The letter from the Deputy Minister of Welfare noted that "other employees, and especially single women, tend to resent special arrangements on behalf of women with home responsibilities. Besides creating an unhappy work situation, special arrangements put women at a disadvantage in seeking work."[105]

x) Changes in Quebec

In June 1965, the Quebec Department of Labour appointed a committee to study night work for women in industry. The five-member committee consisted of three women (a judge, a doctor, and a labour representative) and two men (an industrial engineering professor and an industrial relations director).[106] At this time, the *Industrial and Commercial Establishments Act* specified that no woman in an industrial establishment could commence her daily work before 7:00 a.m. or end after 6:00 p.m., except in certain circumstances.[107]

The inquiry resulted from several years of campaigning by industry representatives, particularly those in textiles, who wanted the restrictions removed to give them more flexibility in their operations.[108] The companies claimed that there was "a production bottleneck" and that "a variety of occupations could be discharged by women working on a third shift".[109]

Two of the principal provincial labour organizations – the Quebec Federation of Labour (QFL) and the Confederation of National Trade Unions (CNTU) – refused to participate in the investigation on the ground that its mandate was too narrow.[110] At its 41st convention the previous September, the CNTU had recommended that "the provincial government be requested to make a thorough inquiry into the problems of female workers and into the remedies that can be applied at the economic, social and juridical levels".[111] The impetus for this action had come from the CNTU women's committee, which had identified night work as one of several areas of concern.[112]

When the committee reported in January 1966, it expressed little opposition to the practice of a third shift for women. The member from Jeunesse ouvrière catholique, however, submitted a dissenting report and was supported by other parts of Quebec society. A publication by Guildo and Yvette Rousseau was written to oppose this move to permit night work for women.[113]

In February 1967, the Royal Commission on the Status of Women was established to inquire into and report upon the status of women in Canada. Among the studies prepared for it was one investigating the attitudes of unionized workers toward the employment of women in the province of Quebec, containing a major section on night work. In addition, the commission received several briefs from Quebec groups expressing their views on night work for women.[114]

xi) The Views of Labour

As noted earlier, employers were pressing for the change, but were faced by opposition from various groups. Their principal opponent was unionized labour, some of whose views are expressed here in order to highlight the underlying social and economic reasons for such opposition.

The CLC, which numbered the QFL among its affiliates, emphasized in its brief to the Royal Commission on the Status of Women the need to examine the social motivation for night work prohibitions:

> If a major social reason against women working at night were merely that this practice is contrary to our traditions, then it cannot be allowed to stand in the way of our demands for equal opportunity and occupational mobility for women. A more rational reason might be the fear that the danger of an assault upon a woman during her travel from her employment to her residence is increased during the night hours.[115]

The brief went on to point out that: "this may well be overcome by having transportation provided by the employer as is now done by many companies at no great cost to themselves." With a hint of sarcasm, it stated:

> Indeed, if women's opportunities for advancement and for entering more remunerative occupations were not so limited, many more might be able to afford their own transportation as most men now do. Finally, we wonder how much greater is the risk to a woman returning from a night shift than that of a woman whose shift is purposely ended shortly before midnight in order to evade restrictions.[116]

The report on the attitudes of Quebec union workers reveals some of the underlying economic factors in the debate. As one textile worker pointed out, it was the men, not the women, who were opposed to the lifting of prohibitions, for which he offered the following reasons:

> Perhaps because they would henceforth be confined to the night shift, or perhaps because they are afraid of losing their jobs. There would be very many more women in the textile industry if this restriction did not exist, with regard to night work. At present, when a person is needed to work on the night shift, the employer has no alternative but to hire a man.[117]

xii) The 1968 Act in Quebec

In 1968 the Quebec *Industrial and Commercial Establishments Act* was amended to empower the Minister of Labour to permit, in special circumstances, the employment of women aged 18 years and over at night on a third shift in an industrial establishment.[118]

Where such work was permitted, the shift could not exceed eight hours, and work had to commence between 11:00 p.m. and midnight. The law required that there be a meal break of not less than 30 minutes in addition to two 10-minute periods, to be granted before and after the meal break. If the women working on the night shift left work before 7:00 a.m., the employer was required to provide them with transportation at the employer's expense.

Under regulations made pursuant to the *Act*, at least one female supervisor, nurse, or first-aid attendant had to be present on the night shift where women were employed, and there had to be at least two women besides the female supervisor in each workroom or workshop.

A special permit for the employment of women at night could not be issued for a period in excess of one year and could be revoked without notice for breach of any conditions under which it was issued.

xiii) Removing the Prohibitions

In the early 1970s, the Quebec prohibitions and most of the other provincial prohibitions against night work for women were removed. What remained in some provinces were some provisions requiring that employers provide transportation between certain hours.[119]

Unions continued to call for provisions for night work throughout the decade. But while, in 1970, the Executive Council of the CLC called upon the federal Government to amend the *Canada Labour Standards Code* to provide a provision on transportation for female employees after midnight, by the end of the decade they espoused extending the provisions to men as well as to women.[120]

In 1985, when the equality rights section of the *Canadian Charter of Rights and Freedoms* came into force, various reviews of existing provincial legislation were carried out. The Charter of Rights Coalition (Manitoba), in identifying night work regulations as singling women out for special treatment, argued that they be extended to male workers and include all work periods commencing or terminating during dark hours and all employment sites not accessible by public transportation.[121]

xiv) The Impact of Night Work on Women's Employment

One union brief to the Royal Commission on the Status of Women emphasized how this restriction on women worked against their claim to equal pay:

> We know of another instance where female and male employees do exactly the same job – winding coils. In this instance the female employees are paid eleven per cent less than the males. The job content is the same, but the females can only work on two shifts .... The fact that the men are required to

do the job on the third shift is considered enough of a change in job content to deny equal pay under the law as it now stands.[122]

More recent studies have documented the effect of shift work on the health and well-being of workers, noting the increased susceptibility to sleeping problems, digestive disorders, irritability, depression, and alcohol and drug abuse. While all workers must deal with the disruptions of domestic and social life, women may face greater problems than men do. As one union noted:

> Women's double duty (work in the home as well as paid labour) means they have even less time for rest and relaxation. Single parents (who are mainly women) must somehow find suitable child-care arrangements and are also forced to sacrifice valuable time with their children.[123]

It is difficult to assess the impact of night work prohibitions on women's employment. The legislation was aimed specifically at industrial work and ignored major areas of women's work, such as nursing, waitressing, domestic work, or telephone operations, where evening and night work were standard features. In addition, it was argued that exceptions should be permitted for industries involving perishable goods (for example, fish, fruit, and vegetables) and industries involving seasonal work increases. Work in areas where women's labour was deemed essential was exempted.

NOTES

[1] Jane Humphries, "Protective Legislation, the Capitalist State, and Working Class Men: The Case of the 1842 Mines Regulation Act", *Feminist Review*, 7, Spring, 1981, pp. 1-33.

[2] See, e.g., *Inspection of Metalliferous Mines Act*, S.B.C. 1897, c.134, ss. 12-14; *Coal Mines Regulation Act*, S.B.C. 1897, c.138, ss. 3-13; *The Mining Operations Act, 1890*, c.10 S.O. 1890, s.4.

[3] Ontario, op. cit. 1890.

[4] *Proceedings of the Trades and Labor Congress of Canada*, 1896.

[5] *The Mines Act*, S.O. 1906, c.11, s. 192.

[6] Edith Lorentsen and Evelyn Woolner, "Fifty Years of Labour Legislation"; reprinted from *The Labour Gazette*, September 1950, p.11.

[7] International Labour Organization, Convention No. 45 (Concerning the Employment of Women on Underground Work in Mines of All Kinds), 1935. See I.V. Zeytinoglu, "The ILO Standards and Canadian Labour Legislation" (1987) 42 *Relations Industrielles* 292.

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4. CURRENT SPECIAL PROTECTIVE MEASURES IN CANADA

This section examines existing provisions, noting any exceptions or exemptions granted. In addition, it reviews changes to the regulations, specifying whether they have been revoked, amended, supplemented, strengthened, or extended to men.

I. Provisions Prohibiting or Limiting the Employment of Women in Certain Work

Over the last century, Canadian women have faced a number of legislative prohibitions or restrictions limiting their employment in certain areas of the labour force. In particular, the following have been, and in some instances continue to be, the subject of government regulation: work in mines and quarries; work involving exposure to dangerous substances such as lead, benzene, and radiation; and work involving the manual transport of loads. More general provisions prohibiting women and girls from doing work considered to be unhealthy, arduous, or dangerous have now disappeared.

i) Underground Work in Mines and Quarries*

At present, women can be employed in underground work in any mine in all jurisdictions. The federal jurisdiction was the last to permit the employment of women underground. In 1979, the *Coal Mines (Cape Breton Development Corporation) Safety Regulations* enacted under the *Canada Labour Code* were amended, and the provision which restricted women was revoked. The previous wording adhered closely to that in the ILO Convention, prohibiting women with the exception of one who

> (a) holds a position of management in the mine and who does not perform manual work; (b) is employed in health and welfare services; (c) spends, in the course of her studies, a period of training in the underground parts of a mine; or (d) is required, occasionally, to enter the underground parts of a mine for the purpose of a non-manual occupation.[1]

The change in federal legislation followed closely on the heels of Canada's denunciation of Convention No. 45 (concerning the Employment of Women in Underground Work in Mines of All Kinds), for in May 1978, Canada withdrew its 1966 ratification. The issue of denunciation had arisen in the mid-1970s because of increasing evidence that women were employed in various surface jobs at mines and since most provinces had or were preparing to remove the statutory prohibitions on underground work. By mid-1975, restrictions on women's employment in mines in Alberta, British Columbia, Manitoba, Newfoundland, and the Yukon Territory had been revoked, and the other jurisdictions were not far behind.[2]

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* See Section 3 of this report for a fuller discussion on the process of change to the mining restrictions.

At this time, many of the arguments for removing the prohibitions on women came from employers in the mining industry. Labour shortages due to high turnovers of mine workers were a major problem at a time when new base-metal mines were opening in several areas of the country.[3] Many employers viewed the employment of women as one way to maintain a steady work force in the face of tough competition from other jobs offering higher wages and better working conditions.

Male workers were reported to be somewhat ambivalent about the move to permit women to work in mines. Although a resolution at the 1975 convention of the Manitoba Federation of Labour called for the elimination of laws or conditions barring women from working underground, some participants disagreed with the trend. A few recalled superstitions about the bad luck brought by women in mines, while others recalled the struggle to remove women from such dangerous and unhealthy work. One was quoted as saying: "The day I have to go to investigate the fatality of a young mother with a couple of kids, and possibly pregnant, is the day I'll pack it in."[4]

In order to ratify the Convention in 1966, all the jurisdictions had ensured that their legislation contained the necessary prohibitions on women's employment. The ratification effort necessitated the addition of prohibitions in the Yukon Territory *Mining Safety Ordinances* and the stalling of draft amendments to the Northwest Territories *Mining Safety Ordinances*. Federal government officials responsible for the territorial legislation were divided on the issue, with some arguing that the prohibition on women was "unnecessary and an apparent discrimination in employment", while others asserted that women "should not engage in underground mining operations".[5]

At the time of ratification, although conforming to the object of Convention No. 45, the actual wording of the provisions varied considerably among jurisdictions. The legislation of the two territories and the federal jurisdiction adhered very closely to the wording of the Convention; Quebec prohibited the employment of women and girls underground except as engineers and geologists; and the others prohibited the underground employment of women but permitted them to work in specific technical, clerical, or domestic capacities in or about mines. Thus, women in Alberta could be employed "in the performance of clerical work or of domestic duties in a hotel, boarding house or residence operated in connection with the mine", while women in Nova Scotia could do a variety of work on the surface if it required "the exercise of normal feminine skill or dexterity" but not "strenuous physical effort".[6]

ii) Work Involving Exposure to Substances Such as Lead, Mercury and Benzene

Canada has ratified neither Convention No. 13 (Concerning the Use of White Lead) nor Convention No. 136 (Concerning Protection against Hazards Arising from Benzene), but several jurisdictions have regulations for hazardous substances which do require or could be interpreted as requiring special treatment for women in the labour force, particularly pregnant women and women capable of bearing children.

Under the *Canada Labour Code*, the *Canada Dangerous Substances Regulations* do not specifically prohibit pregnant women from employment in work processes involving lead, mercury, or benzene. Under the section on medical examinations, however, if an

employer felt that the health of a woman might be endangered, the employer could stop the work of a female employee until a medical practitioner declared her fit for such work.[7]

In Ontario, under the *Occupational Health and Safety Act*, there are regulations respecting lead and mercury with provisions applying to women capable of bearing children.[8] For example, section 4 (1) of the Code for Medical Surveillance concerning action on levels of lead in blood, specifies: "In order to safeguard a developing fetus a woman capable of bearing children must be removed from lead exposure when the blood lead concentration is found to exceed 0.40 mg/L." In addition, section 5 concerning health education states: "Women workers should be encouraged to notify the employer and the examining physician as soon as possible if they become pregnant. When a physician is informed that a worker is pregnant, the physician must advise the worker and the employer whether the worker should be removed from further exposure to lead."

Thus, under this Code a distinction is made between women capable of bearing children and other workers. On the issue of blood levels, fertile women must be removed when their blood lead concentration exceeds 0.40 mg/L, and no level is set for their return to work, while other workers are removed at blood lead concentrations of 0.70 mg/L. In addition it seems that, under the health education section, a physician can order a pregnant woman removed from lead exposure.

Under the mercury regulations, section 5 of the Code for Medical Surveillance concerning health education states: "Exposure of women capable of bearing children should be kept to a minimum." A review of these regulations to assess their conformity with the equality provisions of the *Charter of Rights and Freedoms* expressed the view that "while women capable of bearing children are not subject to removal from the workplace at a lower urine mercury concentration than that specified for other workers", this statement "invites physicians and doctors to treat such women differently from other workers".[9]

In Quebec, the *Occupational Health and Safety Act* gives all workers the right to refuse dangerous work, but includes a special provision for pregnant workers and nursing mothers.[10] With a medical certificate verifying that the working conditions are hazardous, pregnant workers can seek a transfer to a position that would not involve such danger. If not immediately reassigned, the worker has the right to stop work until this is done or the child is born whichever occurs first. The legislation provides certain guarantees for salary and benefits as well as the entitlement to the same work duties following the transfer or work stoppage. Workers who breast-feed have similar entitlements.

Ontario and Quebec share two characteristics: they are the most populated and most industrialized provinces. Their current occupational and health laws (although providing all workers with extensive rights) differ in both the history of their development and in their application to women. While the political position of the governments at the time of the major legislative changes was a partial factor, the role of organized labour appears to have been the primary influence on the differing legislative outcomes.

In 1972, the three major Quebec labour bodies formed the Common Front for joint negotiation on issues deemed crucial to their public sector members. Of the 200 000 workers in this sector, more than two-thirds were women, and issues related to women's childbearing responsibilities quickly became a priority. By 1979, there was a concentrated demand for improved maternity leave benefits and for parental leave and

workplace safety during pregnancy. Having publicly committed itself to increased equality for women, the provincial government was under great pressure to demonstrate its consistency in negotiations in regards to equality issues. By October 1979, the Common Front had gained 20 weeks paid maternity leave and numerous other benefits, including the right of a pregnant worker to information about dangers, the right to transfer, and the right to income if she must leave work.[11]

During these negotiations, the government perceived that it was caught in a difficult position since its own workers would have benefits exceeding those of workers in other sectors. By the end of 1979, the *Occupational Health and Safety Act* became the first legislation in Canada to provide for a pregnant woman "the benefit of reassignment where her working conditions involve physical danger for her unborn child, or for herself due to her pregnancy" along with the requirement for income guarantees where transfers were not feasible. Although it was several years before the reassignment regulations were in place, these progressive provisions for women remained.[12]

In contrast, it has been suggested that the Ontario legislation grew out of "the state's growing concern with the sources of illness and the recognition of the links between health and productivity", but more particularly the increasing evidence of the high cost of work-related disease and injury.[13] The appointment of a Royal Commission on the Health and Safety of Workers in Mines in 1974, and the resulting recommendations in 1976, formed the basis of the provincial legislation. Until the mid-1970s, hazards in the workplace had not been a high priority for the leadership of the Ontario Federation of Labour. But by the time the legislation was completed it had been shaped by the increasingly strong and articulate concerns of organized labour.

The regulations, however, reflected more of the corporate position than that of labour. Although they set specific exposure standards instead of the flexible guidelines requested by business, the levels of exposure were much higher than those proposed by labour, and they opened the door to discrimination against women. While the August 1980 draft regulations for lead and mercury did not differentiate between men and women, by May 1981 they pointed toward special treatment for women of child-bearing capacity without providing specific reassignment or income security protections.[14]

In November 1979 the Ontario Federation of Labour drew attention to the evidence that low levels of lead can be damaging both to a developing fetus and to sperm and emphasized that it was unacceptable to exclude those workers considered to be susceptible, stating "our focus must be the workplace".[15] A month later, the Ontario Office of Arbitration ruled against some women who complained of discrimination after being ordered to either produce evidence of sterility or agree to a transfer out of a battery division at a General Motors plant in Oshawa.[16] The United Auto Workers argued that, because lead impairs male fertility, the company policy discriminated against men by leaving them in a hazardous workplace. The arbitrator left open the possibility for male workers in Ontario to refuse dangerous work involving lead exposure.

The Ontario government has been criticized for its belated expressions of concern for the fetus and for preventing "a full and useful discussion of the important substantive issues of equality of employment opportunity for women and the alternative policy options available to protect equality and foetal health".[17] While arguing that scientific evidence dictated the standards, the government did not explore the question of whether it might be "economically feasible to protect the susceptible entity by setting a lower exposure level

for all workers".[18] In fact, the Minister of Labour, who was responsible for the legislation, argued that the removal of women from exposure to teratogenic substances (agents that can cause birth defects) was a measure compatible with past human rights rulings that "the health of a fetus is a reasonable and bona fide qualification for an employer to limit employment opportunities for women capable of bearing children".[19]

Across the country, there is increasing evidence of company policies excluding women from certain jobs involving potential exposure to hazardous substances. In addition to employment restrictions on women in certain battery-storage plants, women have been barred from work in certain areas of smelters, from work in vinyl chloride plants, and from nickel and silver refineries.[20] These industries have not traditionally hired large numbers of women, and thus the reported exclusions have involved small groups of women. The policies are perceived, however, as diminishing the opportunity of women to seek a wider range of jobs.

In a case brought before the Canadian Human Rights Commission, the female complainants alleged that the policy of Hudson Bay Mining and Smelting Company, which restricted females of child bearing age from employment in high lead areas of their smelters, was adversely affecting their opportunities for employment and promotion. The Commission Tribunal ordered the company to implement a lead monitoring program to protect the health of all employees, male and female. Fertile female employees were encouraged to notify a company physician if they intended to become pregnant or immediately if they became pregnant. This would allow the company to find the employee another job at lower lead exposure levels for additional protection during conception and pregnancy.[21]

More recently, the policy of Inco Metals at its Copper Cliff, Ontario, nickel refinery prohibiting "females of child-bearing potential" from working in certain areas considered hazardous because of the possibility of leaks of carbonyl gas was found to be discriminatory on the basis of sex.[22] In a lengthy decision, Peter Cumming as a one-person Ontario Human Rights Board of Inquiry found that the risk of damage to a fetus was minimal. Moreover, the employer's policy was discriminatory because the evidence provided did not demonstrate a significant risk to the fetus outweighing the woman's right to advance in employment. A fetus could be protected by the employer, and the policy would be allowed, according to Cumming, only where the risk was a substantial possibility. No damages were awarded, however, since he found that the employer had acted in good faith with respect to the complaint and its policy, which was based upon existing medical evidence.

Writing before this decision, one commentator levelled a number of perceptive criticisms against Inco's policy:

> While it [the policy] is based on the [unproven] assumption that exposure to the agent is harmful only for pregnant women, it has the effect of excluding even women who have no intention of becoming pregnant. It also does not address the question of possible reproductive harm to men .... And ... it denies women an employment opportunity even though there may be little likelihood of exposure during early pregnancy.[23]

iii) Work Involving Exposure to Radiation*

Under federal jurisdiction, the relevant current legislation is the *Atomic Energy Control Act*, the *Atomic Energy Control Regulations*, and the *Radiation Emitting Devices Act*. The *Regulations* were changed in 1985 after several women challenged employers in the Canadian nuclear industry over their refusal to hire women of child-bearing capacity.[24] Union, employer, and women's organizations were among those responding to changes proposed by the Atomic Energy Control Board.

The 1985 amendment removed the special category of limits for "female atomic radiation workers of reproductive capacity" and stipulated that women workers are subject to the same limits of exposure as men except during pregnancy. Women are now obligated by the *Regulations* to inform an employer as soon as they are aware of being pregnant. The employer must inform any licensee where the pregnant worker is engaged, and the dose to the abdomen of a pregnant atomic worker must "not exceed a total of 1 rem, accumulated at a rate of not more than 0.06 rem per two weeks".

Many jurisdictions, such as Alberta, Manitoba, Ontario, Saskatchewan, and the Yukon, have recently undertaken a review of their radiation-emitting devices regulations. In Newfoundland, under *The Radiation Health and Safety Act*, the current regulations stipulate that the operating procedures for medical radiation equipment must ensure proper gonadal shielding and any other means of protection for women in their reproductive years. In addition, all pregnant workers, including technicians in training and students, are not to be exposed abdominally to more than 500 millirems of ionizing radiation for the duration of their pregnancy while performing their employment duties.[25]

iv) Manual Transport of Loads and Maximum Weights

Responsibility for legislation applying to the manual transport of loads and maximum permissable weights falls within all jurisdictions. In several jurisdictions, however, specific provisions have never existed, while in others they have been removed in the last decade. In British Columbia, for example, factory regulations prohibited employers from requiring women to lift weights exceeding 35 pounds in the course of their regular work. In addition, the employer was required to prohibit women from doing any type of overhead lifting or stacking. These regulations were repealed in November 1973.[26]

Until recently, regulation E110-R1 of Manitoba's *Employment Standards Act* stated that no employer shall require or permit any child, adolescent, or female employee "to lift articles of such weight that an excessive strain may be imposed on the employee".[27] This has been repealed and replaced by Manitoba regulations 187/89R and 189/187R. A plausible reason is explained in a 1985 statute audit by the Manitoba Charter of Rights Coalition which noted that by implying that women workers required more protection than male workers the provision could be a cause of systemic discrimination:

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* See Section 3 of this report for a fuller description of the process and group positions on changes to radiation regulations.

> There is no rationale for singling out women and children in this regulation as it is also not reasonable for an employer to ask a male employee to lift articles of such a weight that an excess strain is imposed on him. Studies have proven that average differences should not be used to justify allocating women to job ghettos.[28]

Other jurisdictions tend to have general provisions requiring that workers handling heavy material be instructed in proper lifting and carrying techniques; a few specify that the physical condition, sex, and age of the employee be considered, but do not set out different standards for male and female workers. The federal legislation, for example, states: "Every employer shall ensure that, where any of his employees is required to manually lift or carry loads in excess of 10 kg, the employee is instructed and trained in a safe method of lifting and carrying such loads and in a work procedure appropriate to the conditions of work and the employee's physical condition." These regulations prohibit the manual transport of an object or material load which by reason of its weight, shape, toxicity, or other characteristic would be likely to jeopardize the worker's health and safety.[29]

In drafting the present *Canada Labour Code*, the federal government took the position that fixing a determined maximum weight for workers was unwise, adhering to the view that physical capacities should be individually assessed rather than based on general sex and age criteria. In reviews of provincial legislation carried out in 1966 and 1967, most respondents argued against setting standards based on average male lifting capacity, and stressed the importance of individual assessments and the necessity for instruction in correct lifting procedures. Some emphasized that mechanical means of lifting and transporting should be more widely used.[30]

v) Other Work Considered to Be Unhealthy, Arduous or Dangerous

Some earlier provincial legislation specifically prohibited women from certain types of industrial work, but by 1973 the last of these prohibitions were removed from the statutes of Quebec and Saskatchewan.

In Quebec, the employment of women was prohibited in certain industrial establishments or in parts of certain establishments which could be deemed dangerous or harmful to health. Pursuant to the *Act*, a schedule of 24 industries was set out in which women could not be employed at all. Women under 18 years of age were prohibited in 26 industries. The prohibitions covered such processes as abattoir operations, work where poisonous fumes were produced, and the handling of dangerous explosives.[31] The *General Regulations Concerning Industrial and Commercial Establishments*, approved by Order-in-Council 1492 of June 13, 1934, prohibited women from carrying out any operation connected with belting or other modes of transmission. The *Regulations* stated: "This should be done by adult workmen."

In Saskatchewan, until 1973, the employment of women was prohibited in certain industries and limited in others. There was a general prohibition against the employment of women in a factory where their health was likely to be permanently injured.[32]

II. Standards Concerning Working Conditions

In Canada, both the Parliament of Canada and the provincial legislatures have the power to enact labour laws relating to hours of work. Since night work and working time laws impose certain restrictions on contracts between employers and employees, they generally fall under provincial authority. Workers under federal jurisdiction are covered by the *Canada Labour Code*, which provides the same standards on hours of work for male and female workers.

i) Night Work*

Since the mid-1960s, the legislative trend has been to remove legal obstructions on night work by women. At present, there are no prohibitions against night work for women in any jurisdiction, but two provinces have regulations requiring that employers provide free transportation between certain hours.**

Until recently a Manitoba regulation required employers to provide women workers whose work begins or ends between midnight and 6:00 a.m. with adequate transportation, without cost to the employee, between the residence of the employee and the place of employment. This was amended to apply to all employees.[33] Similarly in Saskatchewan, under regulations of *The Labour Standards Act*, women workers in hotels, restaurants, educational institutions, hospitals, and nursing homes who are required or permitted to finish work between 12:30 a.m. and 7:00 a.m. must be provided by the employer with free transportation to their homes.[34]

The Manitoba regulations were criticized by the Charter of Rights Coalition (Manitoba) as discriminating against male workers on the basis of sex.[35] The coalition argued that they should be extended to male workers and should include all work periods commencing or terminating during dark hours and all employment sites not accessible by public transportation. Their analysis noted that men can be assaulted or robbed just as easily as women; wondered why the magic hours of midnight and 6:00 a.m. had been chosen; and pointed out that, while lack of access to private transportation is greater for women, lack of access to regular modes of public transportation is a problem for all workers during certain hours.

Unions have moved toward demands for night transportation for men as well as women, but some bargaining units continue to negotiate for special provisions for women. The Canadian Union of Public Employees, for instance, has a contract clause for female employees at the University of British Columbia requiring the employer to pay for taxi transportation at night in recognition of the difficulties women might find in getting public transportation.[36]

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* See Section 3 of this report for a more complete description of the process of legislative change.

** Although Canada has few special protective measures for women employed in night work, this issue is a subject of considerable interest at the international level. It is on the agenda (Item No. 5, Night Work (Women)) for the June 1989 annual conference of the ILO in Geneva.

ii) Working Time

At present, no length of day provisions apply specifically to women. The last provincial laws prohibiting the employment of female employees for longer than nine hours daily were revoked in New Brunswick and Quebec in the mid-1970s.[37]

Certain overtime and maximum weekly hours provisions, however, exclude areas where women work in large numbers. For example, in Prince Edward Island, persons employed for the sole purpose of protecting and caring for children in private homes are not covered by overtime rates.[38] In Ontario, extended hours may be worked by seasonal workers in the hotel, motel, and tourist resort industries and in fresh fruit and vegetable processing before overtime pay rates apply.[39] The exclusion of many traditionally female occupations from overtime legislation reveals yet another inconsistency in the "protection" for women.

III. Other Special Measures

i) Seats, Restrooms, and Female Supervisors

Provisions requiring seats, restrooms, and female supervisors for female workers were included in the first provincial factory statutes. Several jurisdictions still have such special measures for women, others have revoked them, and at least one province has extended the measures to male workers.

In British Columbia, Manitoba, and Nova Scotia, employers must provide a private restroom with one or more couches, cots, and chairs in certain cases.[40] In British Columbia, this applies where 10 or more women are employed in the factory, shop, or office. In Manitoba, this applies to all workplaces where 10 or more women are employed and, in Nova Scotia, this applies to industrial establishments with female workers.

In addition, in British Columbia an employer is required to provide seats for female workers if all or most of the work done by women in the factory can be effectively performed while seated. Also, when female workers are required to stand constantly on cement or hard-surface floors in the performance of their employment duties, the employer must provide resilient material on the floor surface.

In Nova Scotia, upon the written request of the Chief Inspector appointed under the *Act*, the employer must appoint a competent female worker to look after the well-being of the female workers in the industrial establishment. The work of the worker put in charge is to be arranged to enable her to adequately attend to such responsibilities.

Several provinces have revoked the special measures applying to female workers. In Alberta, the *Labour Act* which required the employer to permit each woman the use of the chair or seat without threat, rule, or other intimidation was dropped in 1973. In Newfoundland, the occupier of a shop where female assistants were employed was to provide seats in a readily convenient place, in such number as to have one seat in each room for every three female assistants employed. It was prohibited to take any means to hinder or restrict the reasonable use of seats by the female assistants.[41]

One province has taken the provisions for women and extended them to male workers. Under the Ontario *Occupational Health and Safety Act*, where 10 or more workers are employed, employers must provide a room or other space that affords reasonable privacy and that has one or more cots and chairs.[42] This legislation is similar to regulations under the *Industrial Safety Act* of 1971, but in that legislation the provision was for women workers only. It applied, however, only where such facilities were not available for all workers at a first-aid station in the factory. Similarly, the 1971 requirement that chairs be provided for workers engaged in work which could be safely and effectively performed while sitting applied to both male and female workers.

ii) Clothing, Footwear, Hairnets and Jewelry

All provisions requiring protective hair covering or prohibiting certain jewelry or footwear directed specifically at women have been revoked. The current emphasis is on general protective measures applicable to men and women.

This new trend was evident in earlier provisions, which have now been superseded by new legislation. Under the Manitoba *Employment Standards Act*, for example, prohibitions against the wearing of jewelry as well as an emphasis on protective clothing and wearing apparel applied to both men and women.[43] Also, by regulations pursuant to the Ontario *Industrial Safety Act*, both men and women were prohibited from wearing long hair near a rotating shaft or other potential source of entanglement, and from wearing rings or jewelry or loose clothing near any rotating shaft.[44]

Until 1973, in Alberta, British Columbia, Quebec, and Saskatchewan, women were required to wear protective head coverings or to otherwise fix their hair to avoid contact with moving machinery.[45] In Alberta and British Columbia, women working near moving machinery were also prohibited from wearing jewelry of any kind that might threaten their safety. In British Columbia, women working near power-driven machinery were required to wear a coverall or slacks. Shoes with open toes or high heels could not be worn during working hours.

NOTES

1 *Canada Labour Code* (Part IV – Safety of Employees), R.S.C. 1970, c. L-1; *Coal Mines (CBDC) Safety Regulations*, SOR/69-31, s.15(6), revoked by SOR/79-86. (As of December 12, 1988, Part IV of the *Canada Labour Code* was renamed as Part II).

2 The prohibitions in the provincial and territorial legislation were contained directly in the statutes covering mining activities, variously called the *Mines Regulation Act*, the *Coal Mines Regulation Act*, the *Metalliferous Mines and Quarries Regulation Act* or the *Mining Safety Ordinances*.

3 Energy, Mines and Resources Canada, *Mining and Manpower: The Next Quarter Century*, Mineral Bulletin MR 147, Ottawa: 1976.

4 "Let Women Take Jobs in Mines – Federation", *Winnipeg Free Press*, October 4, 1975.

5 National Archives of Canada, RG 27, Vol. 3670, file 628-45-1, Department of Labour, letter from E.A. Cote, Deputy Minister of Northern Affairs and Natural Resources to G.V. Haythorne, Deputy Minister of Labour, September 28, 1965.

6 Alberta, *The Coal Mines Regulation Act*, R.S.A. 1955, c.47, s. 94; Nova Scotia, *Metalliferous Mines and Quarries Regulation Act*, R.S.N.S. 1967, s. 4(2).

7 *Canada Dangerous Substances Regulations*, C.R.C. 1978, c. 997, s. 37(1); repealed and replaced by SOR 86-304, S. 10.20.

8 *Occupational Health and Safety Act*, R.S.O. 1980, c. 321; O.Reg. 536/81 (lead), and O.Reg. 141/82 (mercury).

9 Charter of Rights Educational Fund, *Report on the Statute Audit*, Toronto: January, 1985, p. 5.4.

10 *Occupational Health and Safety Act*, S.Q. 1979, c. 63, as amended now R.S.Q. c. S-2.1; *Regulation Respecting Certificates for Protective Reassignment of Pregnant or Nursing Workers*, Gazette Officielle, Part 2, January 27, 1982. See Suzanne Belanger, "Le retrait préventif de la travailleuse enceinte", *Cdn. J. Women and the Law*, 1(2), 1986, p. 498.

11 Julie White, *Women and Unions*, Ottawa: Canadian Advisory Council on the Status of Women, 1980, pp. 109-113.

12 Quebec, Bill 17, *An Act Respecting Occupational Health and Safety*, 1979, Explanatory Notes, p. 3.

13 Vivienne Walters, "Occupational Health and Safety Legislation in Ontario: An Analysis of its Origins and Content", *Canadian Review of Sociology and Anthropology*, 20 (4), 1983, p. 419.

14 Katherine Swinton, "Regulating Reproductive Hazards in the Workplace: Balancing Equality and Health", *University of Toronto Law Journal*, 33 (1), Winter, 1983, p. 45.

15 Ontario Federation of Labour, "Lead", *At the Source*, 1 (1), p. 6.

16 Ontario Office of Arbitration, *General Motors of Canada Ltd.* v. *U.A.W. Local 222*, Case CO-6, Arbitrator E.E. Palmer, Decision Dec. 5, 1979.

17 Supra, note 14, p. 54.

18 Ibid., p. 55.

19 Advisory Council on Occupational Health and Occupational Safety, *Fourth Annual Report, 1981-82*, Toronto: Ontario Government Bookstore, 1983, p. 107; letter from the Hon. Robert Elgie, Minister of Labour to the Advisory Council, Feb. 9, 1982.

[20] Exclusions are reported in works such as: Lynn Kaye, *Danger, Keep Out! Exclusionary Hiring Practices by Employers. Reproductive Hazards at Work*, Ottawa: Presentation to the National Association of Women and the Law Biennial Conference, 1985. Marianne Langton, "Is Your Job Hazardous to Your Health?", in *Still Ain't Satisfied! Canadian Feminism Today*, Toronto: The Women's Press, 1982. Nancy Miller Chenier, *Reproductive Hazards at Work: Men, Women and the Fertility Gamble*, Ottawa: Canadian Advisory Council on the Status of Women, 1982.

[21] Canadian Human Rights Tribunal, *Cassan et al.* v. *Hudson Bay Mining and Smelting Company*, Order dated Nov. 22, 1985, with attached Hudson Bay Mining and Smelting Lead Program and Guidelines to Physicians.

[22] *Wiens* v. *Inco Metals Co.*, Ontario Human Rights Board of Inquiry, March 6, 1988, unreported.

[23] Marianne Levitsky, "Protecting Workers from Reproductive Hazards", *Cdn. J. of Women and the Law*, 1(2), 1986, p. 488, 495-496.

[24] *Atomic Energy Control Regulations*, SOR/85-335. See also *Atomic Energy Control Act*, R.S.C. 1979, c. A-19, as amended; *Radiation Emitting Devices Act*, R.S.C. 1970, 1st Supp., c. 34, as amended.

[25] *The Radiation Health and Safety Act*, S.N. 1977, c. 90, as amended; *The Radiation Health and Safety Regulations*, 1981, Nfld. Reg. 36/81.

[26] *Factories Act*, R.S.B.C. 1960, c. 136; Regulation 195/59 re Female Factory Employees made by Order in Council No. 811, May 11, 1945; repealed by B.C. Reg. 415/73.

[27] *The Employment Standards Act*, R.S.M. 1970, c. E110, as amended; *Regulation Respecting Minimum Wages and Working Conditions*, M.R.R. 1971 E110-R1; repealed and replaced by 187/87R and 189/87R.

[28] Charter of Rights Coalition (Manitoba), *Charter Compliance: Selected Provincial Statutes*, Manitoba: July 1985.

[29] *Canada Labour Code* (Part IV – Safety of Employees) R.S.C. 1970, c. L-1, as amended; *Canada Materials Handling Regulations*, C.R.C. 1978, c. 1004, amended by SOR/80-302. (As of December 12, 1988, Part IV of the *Canada Labour Code* was renamed as Part II).

[30] International and Provincial Relations, *Where Canada Stands: On the Implementation of ILO Conventions on Occupational Safety and Health*, Ottawa: Labour Canada, 1976, Volume 2, p. 180; also National Archives of Canada, RG 27, Vol. 3666, file 626-51-5 and 3668, file 627-3-4, Department of Labour, Maximum Permissable Weights.

[31] *Industrial and Commercial Establishments Act*, R.S.Q. 1964, c. 150.

[32] *The Factories Act*, R.S.S., 1965, c. 370; repealed by S.S. 1973-74, c. 38.

[33] *Employment Standards Act*, R.S.M. 1970, c. E110, as amended; *Regulation Respecting Minimum Wages and Working Conditions*, M.R.R. E110-R1; repealed and replaced by 187/87R and 189/87R.

[34] *The Labour Standards Act*, R.S.S. 1978, c. L-1, as amended; *The Minimum Wage Board Order No. 2 (1981)*, S. Reg. 203/80.

[35] Supra, note 28, p. 6.49.

[36] Canadian Union of Public Employees, *A Decade of Breaking Through at the Bargaining Table*, Ottawa: 1985.

[37] *Minimum Employment Standards Act*, R.S.N.B. 1973, c. M-12, as amended; *Industrial and Commercial Establishments Act*, R.S.Q. 1964, c. 150.

[38] *Labour Act*, R.S.P.E.I. 1974, c. L-1, as amended.

[39] *Employment Standards Act*, R.S.O. 1980, c. 137, as amended.

[40] *Factory Act*, R.S.B.C. 1979, c. 118, as amended; *The Workplace Safety and Health Act*, S.M. 1976, c. 63 as amended; *Industrial Safety Act*, R.S.N.S. 1967, c. 141, as amended.

[41] *The Alberta Labour Act*, R.S.A. 1955, c. 167; *The Hours of Work Act*, S.N. 1963, No. 69.

[42] *Occupational Health and Safety Act*, R.S.O. 1980, c. 321.

[43] *The Employment Standards Act*, S.M. 1957, c. 20; now *Employment Standards Act*, R.S.M., 1970, c. E110.

[44] *Industrial Safety Act*, S.O. 1971, c. 43; now *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. See Regulation 453, R.R.O. 1970.

[45] *The Alberta Labour Act*, R.S.A. 1955, c. 167; B.C. Reg. 195/59 made pursuant to the *Factories Act;* Quebec. Reg. concerning Industrial and Commercial Establishments by Order in Council 1492, June 13, 1934; *The Factories Act*, S.S. 1965, c. 370.

5. THE ISSUES

From the beginning of the history of protective legislation in Canada, a number of issues have emerged repeatedly. There are the medical/health questions that focus on biological differences between men and women and the social issues based on specific views of women's place in society and the economy. These two sets of issues have changed shape as our scientific knowledge has become more sophisticated and the concept of equality has developed. Employers, unions, women's groups, and reformers have used them and adapted them for their own purposes. These debates are still with us. Behind the discussion lies the very serious issue of the impact of protective legislation on women's employment over the decades. This issue has been touched on earlier but will be more fully explored in this chapter.

I. Medical/Health Questions

In the past, the underlying medical arguments for protective legislation applicable to women were based on the premise that men and women had distinctive physiological and psychological characteristics which led to different outcomes in the same work environment. Thus, the arguments focused on the biological differences leading to the conclusion that women had different physical and mental skills and abilities making them more or less suited for certain jobs. In addition, the ability to bear children was viewed as rendering all fertile women more susceptible to hazardous exposures.

Among the 19th century groups expressing concern for the health of women in industry were some seemingly unlikely allies: unions, composed primarily of working class men, and middle class women's organizations. Separately, and on occasion together, they expressed concern publicly over the detrimental effect on women workers of the long hours, the unsanitary and unsafe work conditions, and the constant physical exertion.

Social reformers pointed out that in many instances female factory workers were reduced to being "mere machine drudges, exhausting their energies and vitality, and frequently, not merely arresting their mental and moral development, but also undermining the health and sapping the vigour of their constitutions".[1] The Trade and Labour Congress of Canada had discussed protective legislation since its first convention in 1883, and concern for the health of women workers was probably one justification for its call for the abolition "of female labour in all branches of industrial life, such as mines, work-shops, factories, etc." in 1898.[2]

Union women as well as men held the view that women needed better health protection at work. Helen Gutteridge, a strong advocate of equality for women, was reported to have said that "short hours are far more essential to women than they are to men .... The injurious physical and mental effects of such work are plainly visible ... and the rapid aging of the working women has its injurious effects on the next generation."[3]

A decade later, the Federation of Women's Labour Leagues, active in Toronto in the late 1920s, expressed its opinion on protective legislation by publishing in its journal a statement issued by the Joint Committee of Industrial Women's Organizations of the

United Kingdom. Among the three types of prospective legislation identified by the committee were two specifically addressing the health needs of women. The committee saw the need to secure:

1) provisions that would be good for men as well as for women, but which can be obtained for women and not for men at the present time;

2) regulations that are needed more for women than for men because women are less fitted than men for dangerous and especially heavy work;

3) forms of protection necessary for women because of their function as mothers.[4]

The particular concern that the reproductive capacity of women might be impaired by their work was often dominant in discussions on the need for protective legislation. Along with fears for the general health of the women was the anxiety that the lives of future generations would be adversely affected. A strong concern for the woman as a future mother led to demands for seats for shop girls, "because extended periods of standing up were thought to be harmful to the reproductive organs".[5] Social reformers argued that it would be "easier to guard the mothers of the next generation than to provide homes for the deformed and imbecile children a few years hence".[6]

The concern over women's health in general and their reproductive function in particular was not without foundation. As the Royal Commission on the Relations of Labour and Capital reported in 1889: "to arrive at the greatest profit, for the smallest expenditure, the mills and factories are filled with women and children to the practical exclusion of adult males".[7] Workers endured long hours, in inadequately ventilated rooms, surrounded by the hazards and noise of belt-driven machinery. The work was often physically arduous, required long periods of standing in one place, and led to frequent exposure to dust and chemicals.

These working conditions were faced by all workers, male and female alike, and as the Toronto Federation of Women's Labour Leagues recognized, securing better protection for women could lead eventually to improved conditions for all workers. While evidence from the late 19th century pointed to hazards such as lead, mercury, and radiation as potential reproductive hazards for men as well as women, "the effect of propagation by the present race and the degeneration of future generations" was cited in 1901 as ample reason to limit the work hours or to exclude only women from certain areas of employment.[8]

A similar narrow perspective on reproductive hazards applies to more recent discussions of medical aspects relating to protective legislation. In the mid-1970s, several companies in Canada openly adopted employment policies which emphasized that concerns for maternal exposure to toxic agents and hazardous conditions took precedence over those for the effect of paternal exposure or even the general health of workers.

In 1975 several female workers in a lead storage-battery division at General Motors in Oshawa, Ontario, were asked to show proof of sterility or to take a transfer to a lead-free area of the factory. The company focused on medical evidence concerning lead, suggesting that a developing fetus could be harmed by maternal exposure and

ignored other findings suggesting that male workers could face the production of abnormal sperm, low sperm count, and decreased sex drive.[9]

In 1976, the International Nickel Company in Sudbury, Ontario, refused to employ women of child-bearing potential in their nickel and silver refineries. Again, the concern was for the developing fetus. In the nickel refinery the problem was sodium diethydithiocarbamate, an antidote for nickel carbonyl gas exposure not yet tested for teratogenicity, while the selenium and tellurium used in the silver refinery had been linked with congenital abnormalities in animal studies.[10]

In the debate over changes to the federal *Atomic Energy Regulations* and to Ontario lead regulations, many employers argued that reducing exposure levels for all workers in the workplace would be too costly and would ultimately result in increased costs for taxpayers. Critics argued that the social cost in terms of unhealthy workers could be greater. Nonetheless, only women have been excluded from certain work involving exposure to lead, radiation and vinyl chloride.[11]

Unions denounce the view that because a woman carries the fetus the issue of reproductive hazards is hers alone, and several have taken cases to the legal arena.[12] They emphasize the exclusion of women from certain industries or jobs, and the women who had themselves sterilized, and state: "The labour movement does not accept this method of dealing with reproductive attitudes. It is discrimination masquerading as protection, since it overlooks the fact that most substances linked to fetal damage cause mutations and may cause cancer. The only acceptable way to control such hazards is at the source, so that workplaces are safe and healthy for women, men and the fetus."[13]

Recently there has been increased attention to the scientific, legal, and political issues associated with reproductive hazards and their effects on all workers. Evidence of the detrimental impact of chemical, physical, biological, and psychosocial hazards on the male reproductive function has been gathered and added to the debate in an effort to push legislators into setting exposure limits safe enough for all facets of reproduction. Studies indicating that exposure to pesticides can cause chromosomal changes, impotence, decreased sperm counts, and atrophy of the testes in male workers and that the social and physical adjustments to shift work may lead to impotency or loss of sex drive in men have been cited in an attempt to shift the focus away from the preoccupation with the special susceptibilities of female workers.[14]

While reproductive concerns provide the main medical basis for current protective measures applied only to women, they are not the sole reason for the exclusion of women from certain jobs traditionally associated with the male work sphere. On occasion, it is still argued that because women have less musculature than men, they should be restricted from lifting certain weights. Men have greater lung capacity and more red blood cells than women, leading to different reactions to physical and environmental factors in the workplace. Women react to heat more quickly than men. These differences and more are used as justification for the occupational segregation of women.[15]

The contemporary critics of the "biological differences" arguments reject the assertion that women must be protected by assigning them tasks perceived to be more suited to female physical capacity and excluded from jobs perceived to endanger their health. Instead they argue that "it is impossible to demonstrate scientifically the

existence of biological differences between women and men which suit either sex for particular jobs. Working conditions which are cited to justify the exclusion of women are also harmful to male workers."[16]

Thus, on the issue of maximum permissable weights, it is suggested that instead of using average differences to justify allocating women to job ghettos, "it would just be as logical to exclude all men from jobs requiring heavy lifting on the grounds that they are statistically more likely to have heart attacks".[17] It is also recognized that pregnant women are less at risk in many physically strenuous situations than previously thought. A recent government report developing guidelines to control risk for women in industry, in addressing the ergonomic aspects of working while pregnant, concludes that "the ability of a woman to continue working while pregnant will vary, depending upon her own individual characteristics and the nature of the task. If a woman can perform a task easily when not pregnant, she should be able to perform the task when pregnant."[18]

The medical arguments underlying the earliest protective measures grew from very real concerns about the arduous and unsanitary conditions faced by women in the labour force. In pushing for greater protection for the health of women, both unions and social reformers were influenced by the prevailing sexist attitude that women were generally more vulnerable than men but, in particular, they were convinced that the reproductive function of women placed them in greater need of protection.

In recent years, greater attention has been drawn to the reproductive susceptibility of male workers and to the role that they play in the healthy outcome of a pregnancy. In addition, the biological explanations devised to justify differential job assignment for men and women, and the limitations of standard setting based only on selected medical or scientific evidence, have been strongly criticized.

II. Social and Equality Issues

Legislation on special protection for women workers evolved in Canada concurrently with the movement toward greater social and economic opportunities for women. Thus, a clash of ideas seemed inevitable. As noted earlier, however, the main participants in the debate, labour and middle class women's organizations, did not have the severe battles that were expected.

Indeed, several historians have observed that male unionists, when questioned about the protection of women workers, often turned for suggestions to the middle class women in reform organizations rather than to working women among their own membership.[19] On the issue of why unions turned to protective legislation rather than to organization and negotiation to resolve the problems of women workers, the following explanation has been offered:

> The problems were defined as health, morality and working conditions, and in most cases, unions were unable to bargain on these issues. In the struggle against starvation wages, strikes were invariably over basic union recognition, low wages or job security. Most of these strikes were lost and certainly there was little possibility of bargaining on other issues. Meanwhile legislation

purported to offer the means to protect women workers from some of the worst health hazards and longest hours.[20]

Social reform groups, including many women's organizations, saw special protective legislation as essential to the welfare of working women. The National Council of Women, at the turn of the century, was a vigorous promoter of protective legislation. It argued that "present working conditions as a whole not only sacrifice unnecessarily the health and strength of the workers and thus degrade the community but also correspondingly impair and reduce the industrial output and power of the country".[21]

Many of Canada's early suffrage societies espoused a dual goal of feminism and social reform. They called for the exclusion of women from arduous or dangerous jobs without realizing that it "implicitly meant designating women's work to a marginal status and institutionalizing the already low wages of female workers".[22]

Fears for the morality of young working women underlay many of the arguments for special protection. The 1889 Royal Commission on the Relations between Labour and Capital in Canada looked carefully at the state of morals in industrial centres, observed that the low wages made it almost impossible for women to live respectably, and concluded that "it's not a matter of surprise that one is occasionally driven in despair to a life of sin".[23]

Anxiety over the corrupting influence of factory work led to prohibitions in certain jobs and to special concessions. Thus, "the 1895 amendments to the *Factories Act* specifically allowed for the prohibition of girls under 18 from employment in any factory deemed 'unwholesome'. Of particular concern were those factories which employed both men and women, and the impropriety of shared washroom facilities in those establishments."[24] Arguments about morality were also raised in connection with women's exclusion from mines. In 1896, the Ontario Executive of the Trades and Labour Congress reported that prohibitions in the Ontario *Mining Act* were aimed at "preventing injury of character".[25]

Some writers noted that government policies with respect to protective legislation and labour recruitment subordinated women's independence to a specific view of the family and its place in society. The policies emphasized the continuation of the private household as an essential producer of new recruits and as a major consumer of the goods in the economy. In addition, women were a reserve army of cheap labour to be pulled into employment as the needs of industry dictated.[26] Thus, the protection of the family was crucial, and any action which might be viewed as encouraging the long-term employment of women was avoided.

Employers in the early periods of protective legislation denied that they had any responsibility for the welfare of their workers, but did not strongly oppose the state in its actions to protect the disadvantaged. Any opposition stemmed from a fear that too stringent regulations might hurt their competitive position or that control of their labour policies might move to powers outside the company.[27] Employers also recognized that improvements in working conditions for all workers could be more profitable. Workers who received special considerations would be more satisfied, more efficient, and less likely to unionize.[28]

During both world wars, employers were able to get exemptions from many of the prohibitions on women's work in areas where there were shortages of male workers and

demands for increased production for war purposes. Thus, in several provinces, women were employed at mine surfaces and on night shifts in factories.

During the late 1960s and early 1970s, there was an increasing realization that protective legislation impeded the progress of women in their move to greater participation in the labour force.[29] By restricting the kind of work women could do, by limiting their hours of work, and by imposing certain requirements on employers, the legislation contributed to sex segregation, reduced women's capacity, and generally increased the resistance among certain employers. The realization led to the removal of most special protective measures and to a greater emphasis on promotional efforts.

Thus many of the changes to Canada's protective legislation occurred in the 1970s, partially in response to the work of the Royal Commission on the Status of Women and to the fanfare surrounding International Women's Year in 1975. The establishment of the Royal Commission gave legitimacy to the concept of equal rights for women, and the 1970s were marked by increased attention from government, business, and unions to the issue of equality in the workplace.

The Royal Commission on the Status of Women recommended that protective legislation be applicable to both sexes. In stating their opposition to discrimination in protective measures, the commissioners noted that "if there are hazards in employment, these measures should protect all employees exposed to them. Protective legislation for women has the effect of restricting their job opportunities."[30]

Various provincial women's organizations took up the issue. In Nova Scotia, in 1976, the Task Force on the Status of Women insisted that "our laws should apply equally to all, regardless of sex".[31] On the mining legislation the task force wanted amendments to include women, and on provisions requiring special restrooms for women it pressed for an extension to male workers. At the same time, a second Nova Scotia group emphasized the need to extend any special legislative benefits to male workers, noting that "protective legislation has often been used to separate and divide male and female workers. If women workers are treated differently, the treatment paves the way for stereotyped jobs and unequal pay."[32]

Governments moved to provide legislated guarantees of equality in the workplace. Although equal pay legislation was passed in the 1950s, it was the equal opportunity legislation of the 1970s which began to secure greater rights for women. At the federal level, the *Canadian Human Rights Act*[33] gave force to efforts to prevent discrimination against women workers. In renouncing the ILO mining convention, the government noted that mining prohibitions limited employment opportunities for women and contradicted the principle of equal treatment and opportunity for men and women. At the provincial level, amendments to discriminatory provisions in a wide range of statutes were passed in 1975.

Government policy on protective measures for women stemmed in part from pressure from women's organizations but also from economic pressure. At the same time that public opinion favoured an enlarged role for women in the labour force, labour shortages in industries such as mining and textile manufacturing were encouraging employers to push for the removal of legislative restrictions. In addition, technical advances made the work less arduous.

In British Columbia, as early as 1967, a high turnover in the mining labour force led legislators to introduce a bill to permit women to work in mines. Although the legislation was rescinded immediately when the province was reminded that Canada was a signatory to ILO Convention No. 45, within the next decade all the mining prohibitions across the country were removed as governments, employers, and women argued that advanced technology made the prohibitions on women obsolete.

In the 1970s employers were pressed to take action to correct past injustices and were urged to change policies, administrative mechanisms, and programs to accommodate women. Some did initiate improvements by hiring more women, eliminating barriers to training programs, or removing discriminatory provisions in pension plans. The greatest efforts were made when there was a scarcity of qualified men. To use the mining example again, in 1974, when a mining company wanted to enlarge and stabilize its work force at a remote Manitoba mine, it set out to attract married couples "by building a duplex home which ... a married couple with children could rent part of to someone who might look after the children".[34] Here the employer recognized that the prohibiting legislation was not the sole factor in keeping women away from employment in mining and set out to attract women by addressing the need for child care.

Unions spoke out with greater vigour on the issue of protective legislation, as well as on other matters related to the status of women. In 1976, the CLC adopted a policy statement on equality of opportunity and treatment for women workers. The declaration included an article requiring the protection of women at work on the same basis and with the same standards of protection as for men and pressing for research on harmful effects to reproduction in men and women. In addition, it asked for the extension of special protective measures to women "for types of work proved to be harmful for them from the standpoint of their social function of reproduction".[35]

The move to exclusionary policies by individual employers in the late 1970s has refuelled the debate on sex-specific protection as it affects women's current employment opportunities. Writers look to the past to find parallels and have pointed out the selective, arbitrary nature of protective legislation, the double standard which prohibited women from dangerous "male" jobs (such as mining, construction, atomic radiation work, or heavy industry) yet encouraged their work in hospitals, dry cleaning operations, and other female-dominated occupations where working conditions were often not only arduous but unhealthy.[36]

At the government level, since 1979 the Canadian Human Rights Commission has arbitrated several cases related to the exclusion of women from jobs deemed by employers to be dangerous to a developing fetus. Initiatives taken by the Deputy Ministers of Health led to the formation in 1979 of the Federal-Provincial Working Group on the Development of Guidelines to Control Risks for Women in Industry. In 1980, the Canadian Advisory Council on the Status of Women emphasized the right of women to full and equal participation in the workplace, noting that "any limitation of job opportunity and earning capacity applied specifically to them is discriminatory". The council stated that "every protective measure must ensure that all workers will be protected equally from the effects of harmful agents and conditions of work. There must be no distinction in the rights and treatment of female and male workers."[37]

The CLC and the Ontario Federation of Labour were among the union federations condemning exclusionary policies. In 1984, the CLC stated: "Different safety standards for women and men protect corporate profits by avoiding the need for costly changes to the work environment. Meanwhile, women are forced into unemployment or low-paying, often equally hazardous work. Men are left to face the hazards."[38] Unions are educating their memberships and are urging stronger collective bargaining demands on the issue. In particular, terms that specify transfers with no loss of pay, seniority, or benefits for pregnant women or for men and women planning to conceive are seen as providing protections applicable to both sexes.[39]

The discussion leading up to the 1985 changes to the *Atomic Energy Radiation Act* revealed a significant difference between the positions of unions and employers. While the unions had recommended the extension of restrictive exposure limits to male workers, the employers argued that they could not be responsible for ensuring the safety of the fetus and that, if women insisted on employment in previously prohibited areas, the special limits for fertile women must simply be changed to allow the same exposure as men except where pregnancy was a factor. As noted earlier, the employers' underlying concern was that more stringent limits for all workers would be too costly.[40] Similar arguments were put forth when the lead and mercury regulations in Ontario were enacted in 1981.[41]

As the debate over radiation and lead levels was taking place, women were waiting to see what effect the equality section of the *Canadian Charter of Rights and Freedoms* would have on these matters. In 1985, when section 15 of the *Charter* came into force, various reviews of existing provincial legislation were carried out to determine the level of compliance with the *Charter*. Included in the reviews were provisions which specifically affected women differently than they affected men and those which had a disparate impact on women because of their employment patterns. Some reviews aimed primarily to identify the offending laws, while others made recommendations for change.

The Ontario Statute Audit Project, as well as identifying the offending legislation, set out to clarify the equality debate surrounding the issue. The authors noted three approaches to sexual equality and characterized them as:

1) absolute equality – which would prohibit any differences in the rules which apply to men and women;

2) sex-specific equality – under which the special qualities of women and the disadvantages under which women function are expressly accommodated for in legislation and give rise to rights which apply only to women;

3) sex neutral/gender – pursuant to which legislation would be sex neutral in language but would consciously be drafted so as to incorporate women's experience and reality; only rights pertaining to pregnancy and breast-feeding would be drafted in expressly sex-specific terms.[42]

In discussing occupational health regulations (for example, those concerning lead, mercury, and radiation) that treat fertile women differently than others, the authors refer to the potential argument that these provisions are "reasonable limits demonstrably justifiable" under the *Charter*. They go on to recommend, however, that the onus be on the government to show that two-tiered standards are necessary; that where

economically feasible the general standards be set low enough to protect especially susceptible workers; and that when two-tiered standards are required, non-pregnant women practising birth control be able to work under the same standards as men and non-fertile women.[43]

They also cite numerous examples where certain groups of women are excluded from basic workplace/employment protections enjoyed by other workers, male and female. These women work as domestics, nannies, homeworkers, residential care workers with the handicapped, part-time workers, food and beverage workers, and agricultural workers. While noting the disparate impact on women, the authors of the report do not make specific recommendations for reform.

In general, when the issue of special protection for women is raised, unions and women's organizations tend to emphasize that their opposition to protective legislation is not to be interpreted as an effort to gain for women an equal right to bear risks or to be injured at work. Instead, they stress the need to improve working conditions for all workers and to ensure that the health of workers and their potential offspring is protected. Employers, for their part, argue that the costs of such changes are prohibitive or that they are technically too difficult. Governments appear, from time to time, to have conceded on this point.

III. The Employment Situation of Women

A common thread which runs through much of the literature is that protective measures have contributed to the segregation of women in certain job categories and limited their economic opportunities. While this conclusion seems valid, even with a careful analysis of the evolution of protective legislation and any resulting changes in employment patterns of women, it is impossible to say definitely what can be attributed to the legislation and what to the prevailing social attitudes and less visible discriminatory measures. The following discussion provides a perspective on this issue by examining relevant statistical information on women's employment, focusing particularly on the areas of women's work affected by protective legislation and the areas where they now work in which there are fewer prohibitions on their employment.

The 1891 Census was the first to provide information on the occupations of women. By this time, about one worker in eight was a woman. The 10 leading occupations for women in 1891 were servant, dressmaker, teacher, farmer, seamstress, tailor, saleswoman, housekeeper, laundress and milliner. The largest proportion of women, 41 percent, were domestic servants.[44]

By 1981, the 10 leading occupations for women were secretaries and stenographers, bookkeepers and accounting clerks, salespersons, tellers and cashiers, waitresses, nurses, elementary and kindergarten teachers, general office clerks, typists and clerk-typists, and cleaners. With the exception of nurses and teachers all of these occupations are categorized as clerical or service.[45]

In 1981, with more than 50 percent of all Canadian women aged 15 years and over employed outside the home, more than half worked in clerical and service jobs. As one major study of women's work emphasized, "the increased participation of women meant more of the same".[46] Thus, while women have increased their participation in the labour

force, they are still concentrated in a small number of occupational groups, in job ghettos where the vast majority of workers are female.

The top 10 female occupations in both 1891 and 1981 were not, however, the areas of employment largely affected by protective legislation. As this paper has pointed out, women were usually not protected in jobs where they worked in large numbers. So what about the mines, the factories, the nuclear reactors, the workplaces where women were restricted or excluded by legislation? The case studies in Section Three provide some preliminary analysis showing the minimal effect of the removal of protective measures for women on their subsequent employment in mines and in jobs involving radiation exposure.

Other studies have indicated a slight movement of women into occupations which were formerly all male in composition. A 1964 federal Department of Labour publication observed that women were "thoroughly absent from production occupations in primary industries (mining, logging, fishing)" and were also absent from the "heavy industry" segment of manufacturing.[47] A more recent publication by the department noted: "In 1981, 34 000 women in forestry, fishing, trapping, mining, quarrying, and the petroleum industry constituted 10.8 percent of the total labour force in these primary industries, compared with only 9 000 female workers in 1971 (4.1 percent of the total)."[48]

While women have been recruited for jobs in mining and have obtained jobs in traditionally male industries, significant economic factors such as labour shortages and industrial growth may have a greater influence than the removal of protective legislation.[49]

The last decade saw a concerted effort by women to gain access to non-traditional jobs, some of them jobs from which they had been barred because of protective legislation, (for example, in mines, steelworks, factories, and railyards). Women made some gains, but the economic depression and high unemployment of recent years has meant that access has been cut off for all workers. For women, gains are now being reversed. One union member noted that "because access to these jobs is a recent gain, women often have the least seniority. Last hired, they have been the first fired in the huge layoffs of the past three years."[50] Add the increasing exclusion of women of reproductive capacity, and the prospects for female workers look limited.

Various reasons, other than protective measures, are given for the continued segregation of women in the labour market: myths about women's aptitudes and abilities, lack of strong enforcement of legislative protection against discrimination, different educational and training directions, systemic discrimination in employment practices, the economic requirement that women be available as a reserve of labour, and so forth. Thus, while the legislative restrictions on the employment of women have been removed, there are lingering arguments about biological differences, proper sex roles, and the economic structure of our society.

The full impact of special protective legislation on the employment opportunities of women has not been documented. It seems obvious, however, that where women were excluded from particular industries or certain jobs, special protection did adversely affect their access to employment. In addition, the application of separate employment standards to women no doubt reinforced societal attitudes about the abilities of female workers and contributed to current labour force segregation.

NOTES

[1] Fidelis, "Healthy and Unhealthy Conditions of Woman's Work", *The Week*, 8, March 27, 1896 p. 421.

[2] Trades and Labor Congress of Canada, *Proceedings of the 14th Annual Session*, Toronto: T.G. Soole, September 1898, p. 31.

[3] Helen Gutteridge, Vancouver Sun, December 12, 1914, p. 8; quoted in Susan Wade, "Helen Gutteridge: Votes for Women and Trade Unions", in *In Her Own Right: Selected Essays on Women's History in B.C.*, edited by Barbara Latham and Cathy Kess, Victoria: Camosun College, 1980, p. 193.

[4] *The Woman Worker*, 2(7), 1926/27, pp. 14-15, as cited in Ceta Ramkhalawansingh, "Women during the Great War", in *Women at Work: Ontario, 1850-1930*, Toronto: Canadian Women's Educational Press, 1974, p. 301.

[5] Royal Commission on Labour Conditions in British Columbia, 1912-1914, IV, pp. 13-22, Alice Klein and Wayne Roberts, "Beseiged Innocence: The 'Problem' and Problems of Working Women – Toronto, 1896-1914," in *Women at Work: Ontario, 1850-1930*, Toronto: Women's Press, 1974, p. 215.

[6] A.M. MacLean, "Factory Legislation for Women in Canada", *American Journal of Sociology*, Vol. 5, 1899-1900, p. 180.

[7] Royal Commission on the Relations of Labour and Capital, *Report*, Ottawa: 1889, p. 79.

[8] Klein and Roberts, supra, note 5, p. 222.

[9] Nancy Miller Chenier, *Reproductive Hazards at Work: Men, Women, and the Fertility Gamble*, Ottawa: Canadian Advisory Council on the Status of Women, 1982, p. 42.

[10] Ibid.

[11] See Marianne Langton, "Is Your Job Hazardous to Your Health?", in *Still Aint Satisfied: Canadian Feminism Today*, edited by Maureen Fitzgerald, Connie Guberman, and Margie Wolfe, Toronto: Women's Press, 1982; Katherine Swinton, "Regulating Reproductive Hazards in the Workplace: Balancing Equality and Health", *University of Toronto Law Journal*, 33(1), Winter, 1983, pp. 45-73.

[12] Miller Chenier, supra, note 9.

[13] Janet Bertinuson, "Working Women", *The Facts*, February 1985, p. 36.

[14] Supra note 9, p. 15.

[15] Karen Messing, "Do Men and Women Have Different Jobs Because of Their Biological Differences?", *International Journal of Health Services*, 12(1), 1982, p. 43.

[16] Ibid., p. 43.

[17] Ibid., p. 45.

[18] Health and Welfare Canada, *The Pregnant Worker – A Resource Document for Health Professionals*, draft of a report of the Working Group on the Development of Guidelines to Control Risks for Women in Industry to the Federal-Provincial Advisory Committee on Environmental and Occupational Health, p. 77. This document has since been published in 1986.

[19] Marie Campbell, "Sexism in British Columbia Trade Unions, 1900-1920", in Latham and Kess, supra, note 3.

[20] Julie White, *Women and Unions*, Ottawa: Canadian Advisory Council on the Status of Women, 1980, p. 17.

[21] Klein and Roberts, supra, note 5.

[22] Carol Lee Bacchi, *Liberation Deferred?: The Ideas of the English-Canadian Suffragists, 1877-1918*, Toronto: University of Toronto Press, 1983; Marie Lavigne, Yolande Pinard and Jennifer Stoddart, "The Federation Nationale Saint-Jean-Baptiste and the Women's Movement in Quebec", in Linda Kealey, *A Not Unreasonable Claim: Women and Reform in Canada 1880s – 1920s*, Toronto: Women's Press, 1979, p. 85.

[23] G. Kealey, ed., *Canada Investigates Industrialism: The Royal Commission on the Relations of Labour and Capital, 1889*, Toronto: University of Toronto Press, 1973, p. 46.

[24] Cynthia Telfer, *The Factories Act: Who's Protecting Whom?*, April 1985, p. 16, unpublished manuscript.

[25] Trades and Labor Congress of Canada, *Proceedings*, 1896.

[26] Veronica Strong Boag, "Working Women and the State: The Case of Canada, 1885-1945", in *Women and the Canadian Labour Force, Proceedings and Papers from a Workshop held at the University of British Columbia, January, 1981* edited by Naomi Hersom and Dorothy E. Smith, Ottawa: Social Science and Humanities Research Council, 1982; Vivienne Walters, "Occupational Health and Safety Legislation in Ontario: An Analysis of its Origins and Content", *Canadian Review of Sociology and Anthropology*, 20(4), 1983, pp. 413-434.

[27] Michael Bliss, *A Living Profit: Studies in the Social History of Canadian Business, 1883-1911*, Toronto: McClelland and Stewart, 1974, See Chapter 3, "The Workingman's Welfare".

[28] Ibid.; Joan Sangster, "The 1907 Bell Telephone Strike: Organizing Women Workers", *Labour/Le travailleur*, 3(3), 1978, p. 121.

[29] See, for example, National Archives of Canada, MG 27 vol. 3172 File 626-48-7 Pt. 1, ILO Conferences – Annual 48th Session – Geneva – 1964 – Women Workers in a Changing World. Department of Labour, Ottawa, September 25, 1963.

[30] Royal Commission on the Status of Women, *Report*, Recommendation No. 18, paragraph 295, Ottawa: Information Canada, p. 89.

[31] Nova Scotia Task Force on the Status of Women, *Report: Herself/Elle-Même*, Halifax: 1976, p. 17.

[32] Susan Perly and the Women and the Law Revision Committee, *Women and the Law in Nova Scotia*, Middleton (N.S.): Resource Education Project, 1976, p. 36.

[33] S.C. 1976-77, c. 33, as amended.

[34] "Women Apply to Mine", *Winnipeg Free Press*, December 21, 1973.

[35] Canadian Labour Congress, *Policy Statement: Equality of opportunity and treatment for women workers*, Article 9, approved by the 11th CLC Constitutional Convention, 1976.

[36] Jennifer Penney, "Sick of Work", in *The Women's Workbook*, edited by Patti Schom-Moffat and Cynthia Telfer, Toronto: Between the Lines, 1983.

[37] Canadian Advisory Council on the Status of Women, *Position Paper: Reproductive Health Hazards in the Workplace*, Ottawa: June 1980, p. 8.

[38] Peggy Nash, *Occupational Reproductive Hazards*, Ontario Federation of Labour, Occupational Health and Safety Training Centre, 1982; Women's Bureau, Canadian Labour Congress, *Women and Health and Safety*, 1984, pamphlet.

[39] Janet Bertinuson, *The Reproductive Rights of Workers*, paper presented to the 14th Annual Health and Safety Conference of the Canada Safety Council, Calgary: 1982.

[40] Marianne Langton, "Is Your Job Hazardous to Your Health?", in *Still Ain't Satisfied*, edited by Maureen Fitzgerald, Connie Guberman and Margie Wolfe, Toronto: The Women's Press, 1982.

[41] Katherine Swinton, "Regulating Reproductive Hazards in the Workplace: Balancing Equality and Health", *University of Toronto Law Journal*, 33(1), winter, 1983, pp. 45-73.

[42] Charter of Rights Educational Fund, *Report on the Statute Audit Project: Preliminary Analysis of Selected Federal and Ontario Laws Based on the Sex Equality Provisions of the Canadian Charter of Rights and Freedoms*, Toronto: January, 1985.

[43] Ibid.

[44] Analysis using census material in *Women at Work: Ontario, 1850-1930*, p. 264-267.

[45] Statistics Canada, *Women in Canada, A Statistical Report*, March 1985, Catalogue 89-503E, Table 7, p. 52.

[46] Pat and Hugh Armstrong, *The Double Ghetto: Canadian Women and their Segregated Work*, Toronto: McClelland, 1979, p. 26.

[47] Department of Labour, *Women at Work in Canada*, Ottawa: Queen's Printer, 1964, p. 29.

[48] Women's Bureau, Labour Canada, *Women in the Labour Force*, Ottawa: 1983.

[49] Wallace Clement, *Hardrock Mining: Industrial Relations and Technological Changes at Inco*, Toronto: McClelland and Stewart, 1981.

[50] Lesley Silver, "Equality Now!: Report on the CLC Women's Conference", *The Facts*, May 1983, p. 5.

6. PROSPECTS AND TRENDS

At present, very few workplace-oriented protective measures remain in Canadian law. Of those still in place, the largest portion are aimed specifically at pregnant women or women of child-bearing capacity and they generally attempt to limit exposure to hazardous substances, such as lead and radiation. Many of the laws relating to hours of work, permissable weights, and the provision of seats have been extended to male workers. Others, such as those prohibiting work at night or in underground mines, have been revoked.

In Canada there is considerable support for the removal of any protective legislation which might contribute to unequal treatment of male and female workers. The major area of disagreement is the subject of special measures to protect women's reproductive capacity. At times there are diverging views between those seeking equal employment opportunity for women and those supporting health and safety measures to protect a developing fetus.

It is frequently argued that "protective legislation is a political and social issue", not just an ethical one.[1] Changes that do occur are most likely to be implemented without upsetting the existing social order or any of its underlying structures and beliefs. It is suggested that exclusionary policies aimed at women will be changed if and when it can be done without upsetting the economic health of the private sector or the development of a fetus. The fact that many workplace hazards affect the reproductive health of male workers and, through them, the health of a fetus has to date had little impact on policies.

There have been some changes that may indicate future directions. In the area of radiation exposure, a long-standing tradition of differential protection for women of reproductive capacity has shifted to focus only on pregnant women and not, as previously, on all women capable of bearing children. The female worker assumes the responsibility of informing her employer about a pregnancy. As Katherine Swinton points out: "This recognition of individual autonomy is a major step for women, although it will not prevent indirect employer discrimination in the form of refusal to hire. It nevertheless increases an employer's difficulty in justifying total exclusion on the basis of sex as a bona fide occupational qualification."[2]

Others have argued that the step was in the wrong direction. By allowing women to be exposed to the same levels as male workers, it ignored arguments that current exposures are too high for all workers. In seeking a balance between the occupational health issues and the equal opportunity issues, standards "should aim at securing maximum protections with no distinctions on the basis of sex".[3]

As a result of several cases of exclusion brought before it, the Canadian Human Rights Commission is considering the development of a policy on discrimination related to reproductive hazards. Although the *Canadian Human Rights Act* prohibits discrimination on the basis of sex and stipulates that pregnancy and childbirth fall under this designation, exceptions will be made if bona fide reasons are advanced. In practice, however, no such policy has been implemented. It has been suggested that the commission's Policy on Pregnancy and Childbirth should refer to health and safety hazards, placing this situation in the context of discrimination.[4]

As this report has noted, protective legislation applying to women has always been selective. Originally limited to women's work in industrial settings, it was extended slightly to cover women working in shops and is currently reduced to exposure to toxic substances found in industrial settings. Women's work in clerical jobs, domestic service, agriculture, and hospitals has not been subjected to the same restrictions. Indeed, when the requirement to provide transportation for females working nights was in effect, most hospital employers simply ensured that the shifts began before the restricted evening period and ended after the specified morning hour.

While the original reasons for protective legislation varied, including everything from pressures on female morality to unfair competition for male workers, the current premise is limited almost solely to fears about women's reproductive function. Women may sometimes be excluded from certain jobs because of company policy developed in response to legislative requirements. Although scientific evidence is generally claimed to be the reason for the exclusion, it is a selective process, which largely ignores the growing body of research pointing to the reproductive vulnerability of male workers.

The resistance among some employers to the hiring of women of child-bearing age has led to considerable discussion about the reduced availability of jobs, the continued segregation of women workers, and the resulting widening of the opportunity gap between men and women. In Canada, the arguments of unions and women's organizations concern ensuring safer and healthier employment for all workers, removing measures that lead to discrimination against women, and extending certain aspects of protection to male workers as well as to women.

NOTES

1 Joanne Baldassi, "The Politics of Protective Legislation", December 1984, 27 pp., unpublished paper; Linda Bohnen, "Women Workers in Ontario: A Socio-Legal History", *University of Toronto Faculty of Law Review*, 31, 1973, pp. 45-74.

2 Katherine Swinton, "Regulating Reproductive Hazards in the Workplace: Balancing Equality and Health", *University of Toronto Law Journal*, 33(1), Winter, 1983, p. 55.

3 Nancy Miller Chenier, *Reproductive Hazards at Work: Men, Women, and the Fertility Gamble*, Ottawa: Canadian Advisory Council on the Status of Women, 1982.

4 Shelagh M'Gonigle, "Pregnancy and Childbirth Discrimination: Health and Safety Hazards", Research and Policy Branch, Canadian Human Rights Commission, September 1985, unpublished paper.

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